

STATE LAW LIBRARY OF MONTANA

Joseph P. Mazurek Justice Building
215 North Sanders Street
PO Box 203004
Helena, MT 59620-3004



Website: courts.mt.gov/library
Email: mtlawlibrary@mt.gov
Phone: 406-444-3660
Fax: 406-444-3603

Legislative History – Montana Session Law

Chapter: 283

Session L: 2011

Checklist of Bill History

Bill Number S.B. 42

History and Final Status Sheet ☒

Introduced Bill ☒

Fiscal Note ☒

Third Reading Bill ☒

Final Version of Bill ☒

House	Senate
Committee: Judiciary	Committee: Judiciary
Hearing Date(s): March 17, 2011, March 22, 2011 (Executive Action)	Hearing Date(s): January 20, 2011, February 14, 2011 (Executive Action)
Committee Report: Bill Concurred as Amended	Committee Report: Bill Passed as Amended
Conference Committee	

Hearing Date(s):

Conference Committee Report:

Compiler Notes

Compiled by: FLR

Date: January 17, 2025

Notes:

STATE LAW LIBRARY OF MONTANA

Joseph P. Mazurek Justice Building
215 North Sanders Street
PO Box 203004
Helena, MT 59620-3004



Website: courts.mt.gov/library
Email: mtlawlibrary@mt.gov
Phone: 406-444-3660
Fax: 406-444-3603

Links to Relevant Media

Senate Judiciary Committee (January 20, 2011)

Discussion of SB 42 + SB 40

Video of Hearing:

<http://sg001-harmony.sliq.net/00309/Harmony/en/PowerBrowser/PowerBrowserV2/20170221/-1/21067?agendaId=96267>

(Unfortunately, they lumped two bills together for discussion SB 40 + SB 42.)

Time Stamp: 08:43:14

Proponents start at 08:53:05 (Montana County Attorneys start the discussion)

Senate Judiciary Committee (February 14, 2011)

Executive Action on SB 42

Audio of Hearing: <https://sg001-harmony.sliq.net/00309/Harmony/en/PowerBrowser/PowerBrowserV2/20110214/-1/21091#info>

Time Stamp: 08:24:10

Senate Floor – 2nd Reading Passed (February 16, 2011)

Video of Floor Discussion:

<http://sg001-harmony.sliq.net/00309/Harmony/en/PowerBrowser/PowerBrowserV2/20170221/-1/21673?agendaId=98849>

Time Stamp: 09:17:47

Floor Discussion lasts 13 mins.

Senate Floor – 3rd Reading Passed (February 17, 2011)

(No Discussion only a vote)

Video of Senate Floor Vote:

<https://sg001-harmony.sliq.net/00309/Harmony/en/PowerBrowser/PowerBrowserV2/20110217/-1/21609#>

STATE LAW LIBRARY OF MONTANA

Joseph P. Mazurek Justice Building
215 North Sanders Street
PO Box 203004
Helena, MT 59620-3004



Website: courts.mt.gov/library
Email: mtlawlibrary@mt.gov
Phone: 406-444-3660
Fax: 406-444-3603

House Judiciary Committee (March 17, 2011)

Initial House discussion of SB 42

Audio of Hearing: <https://sg001-harmony.sliq.net/00309/Harmony/en/PowerBrowser/PowerBrowserV2/20110317/-1/28553#>

Time Stamp: 08:58:13

This discussion has numerous witnesses and runs for 1 hr 15 mins.

House Judiciary Committee (March 22, 2011)

Executive Action on SB 42

Audio of Hearing: <https://sg001-harmony.sliq.net/00309/Harmony/en/PowerBrowser/PowerBrowserV2/20110322/-1/28555>

Time Stamp: 08:20:12

This discussion lasts for 12 mins.

House Floor – 2nd Reading Concurred (March 29, 2011)

Audio of Floor Discussion: <http://sg001-harmony.sliq.net/00309/Harmony/en/PowerBrowser/PowerBrowserV2/20170221/-1/27366?agendaId=102132>

Time Stamp: 09:12:10

Floor Discussion lasts for 17 mins

House Floor – 3rd Reading Concurred (March 30, 2011)

(No Discussion, Vote)

Audio of Floor Discussion: <https://sg001-harmony.sliq.net/00309/Harmony/en/PowerBrowser/PowerBrowserV2/20110330/-1/20474#info>

Time Stamp: 11:04:04

STATE LAW LIBRARY OF MONTANA

Joseph P. Mazurek Justice Building
215 North Sanders Street
PO Box 203004
Helena, MT 59620-3004



Website: courts.mt.gov/library
Email: mtlawlibrary@mt.gov
Phone: 406-444-3660
Fax: 406-444-3603

Senate Floor - 2nd Reading House Amendments Concurred (April 6, 2011)

Video of Floor Discussion: <https://sg001-harmony.sliq.net/00309/Harmony/en/PowerBrowser/PowerBrowserV2/20170221/-1/21703?agendaId=99212#agenda>

Time Stamp: 08:50:18

Floor Discussion lasts for 2 mins

Senate Floor – 3rd Reading Passed as Amended by House (April 7, 2011)

(No Discussion, Vote)

Video of Floor Discussion: <https://sg001-harmony.sliq.net/00309/Harmony/en/PowerBrowser/PowerBrowserV2/20170221/-1/21703?agendaId=99212#agenda>

Time Stamp: 09:44:10

Summary

Sponsoredby: Shockley, Jim
(R) SD 45

Progress		
Status	Date	Passed
Introduced	12/06/10	✓
Passed (S) Committee	01/03/11	✓
Passed Senate	02/14/11	✓
Passed (H) Committee	02/17/11	✓
Passed House	03/22/11	✓
To Governor	03/30/11	✓

Draft #	LC0378
Amendment(s)	No
Chapter #	<u>283</u>
Current Status	Chapter Number Assigned
Co-Sponsor(s)	None
Drafter	Lane, Valencia
Requester	Law and Justice Interim Committee
By Request Of	Law and Justice Interim Committee

Fiscal Note	<u>Yes</u>
Preintroduction Required	Yes
Category	General Bills
Subject(s)	Law Enforcement (see also: Criminal Procedure), Alcohol and Drugs, Courts (see also: Judges and Justices; Juries and Jurors),
Transmittal Date	02/24/11
Return Date	04/01/11

Sections Affected	Effective Date	Qualifier
All Sections	04/28/2011	

Bill Explorer - SB 42: Authorize warrants to obtain blood or breath test in DUI cases

Status

Date	Action	Committee	Yes Votes	No Votes
04/28/11	Chapter Number Assigned			
04/28/11	(S) Signed by Governor			
04/20/11	(S) Transmitted to Governor			
04/20/11	(H) Signed by Speaker			
04/19/11	(S) Signed by President			
04/08/11	(C) Printed - Enrolled Version Available			
04/08/11	(S) Returned from Enrolling			
04/07/11	(S) Sent to Enrolling			
04/07/11	(S) 3rd Reading Passed as Amended by House		40	10
04/07/11	(S) Scheduled for 3rd Reading			
04/06/11	(S) 2nd Reading House Amendments Concurred		43	6
04/06/11	(S) Scheduled for 2nd Reading			
03/30/11	(H) Returned to Senate with Amendments			
03/30/11	(H) 3rd Reading Concurred		65	35
03/30/11	(H) Scheduled for 3rd Reading			
03/29/11	(H) 2nd Reading Concurred		70	29

Date	Action	Committee	Yes Votes	No Votes
03/29/11	(H) Scheduled for 2nd Reading			
03/22/11	(C) Printed - New Version Available			
03/22/11	(H) Committee Report--Bill Concurred as Amended	(H) Judiciary		
03/22/11	(H) Committee Executive Action--Bill Concurred as Amended	(H) Judiciary	15	5
03/17/11	(H) Hearing	(H) Judiciary		
03/05/11	(H) Referred to Committee	(H) Judiciary		
03/05/11	(H) First Reading			
02/17/11	(S) Transmitted to House			
02/17/11	(S) 3rd Reading Passed		33	17
02/17/11	(S) Scheduled for 3rd Reading			
02/16/11	(S) 2nd Reading Passed		35	14
02/16/11	(S) Scheduled for 2nd Reading			
02/14/11	(C) Printed - New Version Available			
02/14/11	(S) Committee Report--Bill Passed as Amended	(S) Judiciary		
02/14/11	(S) Committee Executive Action--Bill Passed as Amended	(S) Judiciary	9	3
02/04/11	(S) Scheduled for Executive Action	(S) Judiciary		
01/20/11	(S) Hearing	(S) Judiciary		
01/06/11	(S) Fiscal Note Printed			
01/04/11	(S) Fiscal Note Received			
01/03/11	(S) First Reading			

Date	Action	Committee	Yes Votes	No Votes
12/27/10	(S) Referred to Committee	(S) Judiciary		
12/10/10	(S) Fiscal Note Requested			
12/06/10	(C) Introduced Bill Text Available Electronically			
12/06/10	(S) Introduced			
11/08/10	(C) Pre-Introduction Letter Sent			
11/03/10	(C) Draft in Assembly/Executive Director Review			
11/01/10	(C) Draft in Final Drafter Review			
10/29/10	(C) Bill Draft Text Available Electronically			
10/29/10	(C) Draft in Input/Proofing			
10/29/10	(C) Draft to Drafter - Edit Review			
09/17/10	(C) Draft in Legal Review			
09/17/10	(C) Draft to Requester for Review			
09/17/10	(C) Fiscal Note Probable			
09/14/10	(C) Draft Request Received			

Showing 1 to 50 of 50 entries

Fiscal

Date	Status
01/06/11	(S) Fiscal Note Printed
01/04/11	(S) Fiscal Note Received
12/10/10	(S) Fiscal Note Requested
09/17/10	(C) Fiscal Note Probable
Fiscal Documents	
SB0042.pdf	
Fiscal Rebuttals	
No matching results found	

Amendments

Amendment	Condensed Version
No Amendments found	

Documents And Links

Previous Versions

[SB0042_x.pdf](#)

[SB0042_3.pdf](#)

[SB0042_2.pdf](#)

[SB0042_1.pdf](#)

Other

[None](#)

refusals made and to violations of 45-5-106, 45-5-205, 61-8-401, or 61-8-406 committed prior to [the effective date of this act].

Approved April 28, 2011

CHAPTER NO. 283

[SB 42]

AN ACT REVISING THE LAWS RELATING TO ALCOHOL-RELATED OR DRUG-RELATED DRIVING OFFENSES; CLARIFYING THAT SEARCH WARRANTS MAY BE ISSUED FOR BLOOD SAMPLES IF THE OFFENDER HAS A PRIOR REFUSAL OR CONVICTION OR PENDING OFFENSE; REVISING THE IMPLIED CONSENT LAW; PROVIDING THAT A PEACE OFFICER MAY REQUEST A SEARCH WARRANT TO OBTAIN A BLOOD SAMPLE FOR CHEMICAL TESTING; AMENDING SECTIONS 46-5-224, 61-8-402, 61-8-404, 61-8-405, AND 61-8-409, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 46-5-224, MCA, is amended to read:

"46-5-224. What may be seized with search warrant. A warrant may be issued under this section to search for and seize any:

(1) evidence, *including blood samples that may yield evidence of any measured amount or detected presence of alcohol or drugs in a person's body when subjected to testing;*

(2) contraband; or

(3) person for whose arrest there is probable cause, for whom there has been a warrant of arrest issued, or who is unlawfully restrained."

Section 2. Section 61-8-402, MCA, is amended to read:

"61-8-402. Blood Implied consent — blood or breath tests for alcohol, drugs, or both — refusal to submit to test — administrative license suspension. (1) A person who operates or is in actual physical control of a vehicle upon ways of this state open to the public is considered to have given consent to a test or tests of the person's blood or breath for the purpose of determining any measured amount or detected presence of alcohol or drugs in the person's body.

(2) (a) The test or tests must be administered at the direction of a peace officer when:

(i) the officer has reasonable grounds to believe that the person has been driving or has been in actual physical control of a vehicle upon ways of this state open to the public while under the influence of alcohol, drugs, or a combination of the two and the person has been placed under arrest for a violation of 61-8-401;

(ii) the person is under the age of 21 and has been placed under arrest for a violation of 61-8-410; or

(iii) the officer has probable cause to believe that the person was driving or in actual physical control of a vehicle:

(A) in violation of 61-8-401 and the person has been involved in a motor vehicle accident or collision resulting in property damage; or

(B) involved in a motor vehicle accident or collision resulting in serious bodily injury, as defined in 45-2-101, or death.

(b) The arresting or investigating officer may designate which test or tests are administered.

(3) A person who is unconscious or who is otherwise in a condition rendering the person incapable of refusal is considered not to have withdrawn the consent provided by subsection (1).

(4) If an arrested person refuses to submit to one or more tests requested and designated by the officer as provided in subsection (2), the refused test or tests may not be given, ~~but except as provided in subsection (5), but~~ the officer shall, on behalf of the department, immediately seize the person's driver's license. The peace officer shall immediately forward the license to the department, along with a report certified under penalty of law stating which of the conditions set forth in subsection (2)(a) provides the basis for the testing request and confirming that the person refused to submit to one or more tests requested and designated by the peace officer. Upon receipt of the report, the department shall suspend the license for the period provided in subsection ~~(6)~~ (7).

(5) If the arrested person has refused to provide a breath, blood, or urine sample under 61-8-409 or this section in a prior investigation in this state or under a substantially similar statute in another jurisdiction or the arrested person has a prior conviction or pending offense for a violation of 45-5-104, 45-5-106, 45-5-205, 61-8-401, or 61-8-406 or a similar statute in another jurisdiction, the officer may apply for a search warrant to be issued pursuant to 46-5-224 to collect a sample of the person's blood for testing.

~~(5)(6)~~ Upon seizure of a driver's license, the peace officer shall issue, on behalf of the department, a temporary driving permit, which is effective 12 hours after issuance and is valid for 5 days following the date of issuance, and shall provide the driver with written notice of the license suspension and the right to a hearing provided in 61-8-403.

~~(6)(7)~~ (a) Except as provided in subsection ~~(6)(b)~~ (7)(b), the following suspension periods are applicable upon refusal to submit to one or more tests:

(i) upon a first refusal, a suspension of 6 months with no provision for a restricted probationary license;

(ii) upon a second or subsequent refusal within 5 years of a previous refusal, as determined from the records of the department, a suspension of 1 year with no provision for a restricted probationary license.

(b) If a person who refuses to submit to one or more tests under this section is the holder of a commercial driver's license, in addition to any action taken against the driver's noncommercial driving privileges, the department shall:

(i) upon a first refusal, suspend the person's commercial driver's license for a 1-year period; and

(ii) upon a second or subsequent refusal, suspend the person's commercial driver's license for life, subject to department rules adopted to implement federal rules allowing for license reinstatement, if the person is otherwise eligible, upon completion of a minimum suspension period of 10 years. If the person has a prior conviction of a major offense listed in 61-8-802(2) arising from a separate incident, the conviction has the same effect as a previous testing refusal for purposes of this subsection ~~(6)(b)~~ (7)(b).

~~(7)(8)~~ A nonresident driver's license seized under this section must be sent by the department to the licensing authority of the nonresident's home state with a report of the nonresident's refusal to submit to one or more tests.

~~(8)(9)~~ The department may recognize the seizure of a license of a tribal member by a peace officer acting under the authority of a tribal government or

an order issued by a tribal court suspending, revoking, or reinstating a license or adjudicating a license seizure if the actions are conducted pursuant to tribal law or regulation requiring alcohol or drug testing of motor vehicle operators and the conduct giving rise to the actions occurred within the exterior boundaries of a federally recognized Indian reservation in this state. Action by the department under this subsection is not reviewable under 61-8-403.

~~(9)~~(10) A suspension under this section is subject to review as provided in this part.

~~(10)~~(11) This section does not apply to ~~blood and breath~~ tests, samples, and analyses of *blood or breath* used for purposes of medical treatment or care of an injured motorist, ~~or~~ related to a lawful seizure for a suspected violation of an offense not in this part, *or performed pursuant to a search warrant*.

(12) *This section does not prohibit the release of information obtained from tests, samples, and analyses of blood or breath for law enforcement purposes as provided in 46-4-301 and 61-8-405(6).*

Section 3. Section 61-8-404, MCA, is amended to read:

"61-8-404. Evidence admissible — conditions of admissibility. (1) Upon the trial of a criminal action or other proceeding arising out of acts alleged to have been committed by a person in violation of 61-8-401, 61-8-406, 61-8-410, or 61-8-805:

(a) evidence of any measured amount or detected presence of alcohol, drugs, or a combination of alcohol and drugs in the person at the time of a test, as shown by an analysis of the person's blood or breath, is admissible. A positive test result does not, in itself, prove that the person was under the influence of a drug or drugs at the time the person was in control of a motor vehicle. A person may not be convicted of a violation of 61-8-401 based upon the presence of a drug or drugs in the person unless some other competent evidence exists that tends to establish that the person was under the influence of a drug or drugs while driving or in actual physical control of a motor vehicle within this state.

(b) a report of the facts and results of one or more tests of a person's blood or breath is admissible in evidence if:

(i) a breath test or preliminary alcohol screening test was performed by a person certified by the forensic sciences division of the department to administer the test;

(ii) a blood sample was analyzed in a laboratory operated or certified by the department or in a laboratory exempt from certification under the rules of the department and the blood was withdrawn from the person by a person competent to do so under 61-8-405(1);

(c) a report of the facts and results of a physical, psychomotor, or physiological assessment of a person is admissible in evidence if it was made by a person trained by the department or by a person who has received training recognized by the department.

(2) If the person under arrest refused to submit to one or more tests ~~as provided in this section under 61-8-402, whether or not a sample was subsequently collected for any purpose~~, proof of refusal is admissible in any criminal action or proceeding arising out of acts alleged to have been committed while the person was driving or in actual physical control of a vehicle upon the ways of this state open to the public, while under the influence of alcohol, drugs, or a combination of alcohol and drugs. The trier of fact may infer from the refusal that the person was under the influence. The inference is rebuttable.

(3) The provisions of this part do not limit the introduction of any other competent evidence bearing on the question of whether the person was under the influence of alcohol, drugs, or a combination of alcohol and drugs."

Section 4. Section 61-8-405, MCA, is amended to read:

"61-8-405. Administration of tests. (1) Only a physician, ~~or~~ registered nurse, or other qualified person acting under the supervision and direction of a physician or registered nurse; may, at the request of a peace officer, withdraw blood for the purpose of determining any measured amount or detected presence of alcohol, drugs, or any combination of alcohol and drugs in the person. This limitation does not apply to the sampling of breath.

(2) In addition to any test administered at the direction of a peace officer, a person may request that an independent blood sample be drawn by a physician or registered nurse for the purpose of determining any measured amount or detected presence of alcohol, drugs, or any combination of alcohol and drugs in the person. The peace officer may not unreasonably impede the person's right to obtain an independent blood test. The officer may but has no duty to transport the person to a medical facility or otherwise assist the person in obtaining the test. The cost of an independent blood test is the sole responsibility of the person requesting the test. The failure or inability to obtain an independent test by a person does not preclude the admissibility in evidence of any test given at the direction of a peace officer.

(3) Upon the request of the person tested, full information concerning any test given at the direction of the peace officer must be made available to the person or the person's attorney.

(4) A physician, ~~or~~ registered nurse, or other qualified person acting under the supervision and direction of a physician or registered nurse; does not incur any civil or criminal liability as a result of the proper administering of a blood test when requested in writing by a peace officer to administer a test.

(5) The department in cooperation with any appropriate agency shall adopt uniform rules for the giving of tests and may require certification of training to administer the tests as considered necessary.

(6) *If a peace officer has probable cause to believe that a person has violated 61-8-401, 61-8-406, 61-8-410, or 61-8-805 and a sample of blood, breath, urine, or other bodily substance is taken from that person for any reason, a portion of that sample sufficient for analysis must be provided to a peace officer if requested for law enforcement purposes and upon issuance of a subpoena as provided in 46-4-301."*

Section 5. Section 61-8-409, MCA, is amended to read:

"61-8-409. Preliminary alcohol screening test. (1) A person who operates or is in actual physical control of a vehicle upon ways of this state open to the public is considered to have given consent to a preliminary alcohol screening test of the person's breath, for the purpose of estimating the person's alcohol concentration, upon the request of a peace officer who has a particularized suspicion that the person was driving or in actual physical control of a vehicle upon ways of this state open to the public while under the influence of alcohol or in violation of 61-8-410.

(2) The person's obligation to submit to a test under 61-8-402 is not satisfied by the person submitting to a preliminary alcohol screening test pursuant to this section.

(3) The peace officer shall inform the person of the right to refuse the test and that the refusal to submit to the preliminary alcohol screening test will result in the suspension for up to 1 year of that person's driver's license.

(4) If the person refuses to submit to a test under this section, a test will not be given *except as provided in 61-8-402(5)*. However, the refusal is sufficient cause to suspend the person's driver's license as provided in 61-8-402.

(5) A hearing as provided for in 61-8-403 must be available. The issues in the hearing must be limited to determining whether a peace officer had a particularized suspicion that the person was driving or in actual physical control of a vehicle upon ways of this state open to the public while under the influence of alcohol or in violation of 61-8-410 and whether the person refused to submit to the test.

(6) The provisions of 61-8-402(3) through (8) (9) that do not conflict with this section are applicable to refusals under this section. If a person refuses a test requested under 61-8-402 and this section for the same incident, the department may not consider each a separate refusal for purposes of suspension under 61-8-402.

(7) A test may not be conducted or requested under this section unless both the peace officer and the instrument used to conduct the preliminary alcohol screening test have been certified by the department pursuant to rules adopted under the authority of 61-8-405(5)."

Section 6. Effective date. [This act] is effective on passage and approval.

Section 7. Applicability. [This act] applies to violations of Title 61, chapter 8, part 4, that occur on or after [the effective date of this act].

Approved April 28, 2011

CHAPTER NO. 284

[SB 238]

AN ACT INCREASING JURISDICTIONAL LIMITS FOR JUSTICES' COURTS, CITY COURTS, AND SMALL CLAIMS COURTS; AMENDING SECTIONS 3-10-301, 3-10-1004, 3-11-103, 7-1-4151, 25-35-502, 25-35-503, 25-35-606, AND 75-7-123, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 3-10-301, MCA, is amended to read:

"3-10-301. Civil jurisdiction. (1) Except as provided in 3-11-103 and in subsection (2) of this section, the justices' courts have jurisdiction:

(a) in actions arising on contract for the recovery of money only if the sum claimed does not exceed ~~\$7,000~~ *\$12,000*, exclusive of court costs *and attorney fees*;

(b) in actions for damages not exceeding ~~\$7,000~~ *\$12,000*, exclusive of court costs *and attorney fees*, for taking, detaining, or injuring personal property or for injury to real property when no issue is raised by the verified answer of the defendant involving the title to or possession of the real property;

(c) in actions for damages not exceeding ~~\$7,000~~ *\$12,000*, exclusive of court costs *and attorney fees*, for injury to the person, except that, in actions for false imprisonment, libel, slander, criminal conversation, seduction, malicious prosecution, determination of paternity, and abduction, the justice of the peace does not have jurisdiction;

SENATE BILL NO. 42

INTRODUCED BY J. SHOCKLEY

BY REQUEST OF THE LAW AND JUSTICE INTERIM COMMITTEE

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE LAWS RELATING TO ALCOHOL-RELATED OR DRUG-RELATED DRIVING OFFENSES; CLARIFYING THAT SEARCH WARRANTS MAY BE ISSUED FOR BLOOD SAMPLES; REVISING THE IMPLIED CONSENT LAW; PROVIDING THAT A PEACE OFFICER MAY REQUEST A SEARCH WARRANT TO OBTAIN A BLOOD SAMPLE FOR CHEMICAL TESTING IF AN ARRESTED PERSON REFUSES TO SUBMIT TO TESTING; AMENDING SECTIONS 46-5-224, 61-8-402, 61-8-404, AND 61-8-405, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 46-5-224, MCA, is amended to read:

"46-5-224. What may be seized with search warrant. A warrant may be issued under this section to search for and seize any:

(1) evidence, including blood samples that may yield evidence of any measured amount or detected presence of alcohol or drugs in a person's body when subjected to testing;

(2) contraband; or

(3) person for whose arrest there is probable cause, for whom there has been a warrant of arrest issued, or who is unlawfully restrained."

NEW SECTION. Section 2. Refusal to submit to test -- search warrant. (1) If a person refuses to submit to one or more tests requested and designated by a peace officer as provided in 61-8-402 and the officer has probable cause to believe that the person has been driving or has been in actual physical control of a vehicle upon ways of this state open to the public while under the influence of alcohol, drugs, or a combination of the two and the person has been placed under arrest for a violation of 61-8-401, 61-8-406, 61-8-410, or 61-8-805, a test or tests may be administered without the consent of the person provided that the officer first obtains a search warrant authorizing administration of the test or tests.

(2) The test or tests must be administered in accordance with 61-8-405.

(3) The results of a test performed pursuant to a search warrant are admissible as competent evidence in any civil or criminal prosecution, subject to applicable rules of evidence.

(4) A person's right to refuse to submit to a test under 61-8-402(4) does not apply to this section.

(5) This section does not prevent law enforcement from obtaining tests without a warrant as otherwise authorized by law.

(6) A subsequent consent to a test that was initially refused does not prevent the issuance of a search warrant under this section.

Section 3. Section 61-8-402, MCA, is amended to read:

"61-8-402. ~~Blood~~ Implied consent -- blood or breath tests for alcohol, drugs, or both -- refusal to submit to test -- administrative license suspension. (1) A person who operates or is in actual physical control of a vehicle upon ways of this state open to the public is considered to have given consent to a test or tests of the person's blood or breath for the purpose of determining any measured amount or detected presence of alcohol or drugs in the person's body.

(2) (a) The test or tests must be administered at the direction of a peace officer when:

(i) the officer has reasonable grounds to believe that the person has been driving or has been in actual physical control of a vehicle upon ways of this state open to the public while under the influence of alcohol, drugs, or a combination of the two and the person has been placed under arrest for a violation of 61-8-401;

(ii) the person is under the age of 21 and has been placed under arrest for a violation of 61-8-410; or

(iii) the officer has probable cause to believe that the person was driving or in actual physical control of a vehicle:

(A) in violation of 61-8-401 and the person has been involved in a motor vehicle accident or collision resulting in property damage; or

(B) involved in a motor vehicle accident or collision resulting in serious bodily injury, as defined in 45-2-101, or death.

(b) The arresting or investigating officer may designate which test or tests are administered.

(3) A person who is unconscious or who is otherwise in a condition rendering the person incapable of refusal is considered not to have withdrawn the consent provided by subsection (1).

(4) If an arrested person refuses to submit to one or more tests requested and designated by the officer

1 as provided in subsection (2), the refused test or tests may not be given, ~~but~~ at the request of the officer unless
2 authorized by a search warrant. Upon refusal, the officer shall, on behalf of the department, immediately seize
3 the person's driver's license. The peace officer shall immediately forward the license to the department, along
4 with a report certified under penalty of law stating which of the conditions set forth in subsection (2)(a) provides
5 the basis for the testing request and confirming that the person refused to submit to one or more tests requested
6 and designated by the peace officer. Upon receipt of the report, the department shall suspend the license for the
7 period provided in subsection (6).

8 (5) Upon seizure of a driver's license, the peace officer shall issue, on behalf of the department, a
9 temporary driving permit, which is effective 12 hours after issuance and is valid for 5 days following the date of
10 issuance, and shall provide the driver with written notice of the license suspension and the right to a hearing
11 provided in 61-8-403.

12 (6) (a) Except as provided in subsection (6)(b), the following suspension periods are applicable upon
13 refusal to submit to one or more tests:

14 (i) upon a first refusal, a suspension of 6 months with no provision for a restricted probationary license;

15 (ii) upon a second or subsequent refusal within 5 years of a previous refusal, as determined from the
16 records of the department, a suspension of 1 year with no provision for a restricted probationary license.

17 (b) If a person who refuses to submit to one or more tests under this section is the holder of a
18 commercial driver's license, in addition to any action taken against the driver's noncommercial driving privileges,
19 the department shall:

20 (i) upon a first refusal, suspend the person's commercial driver's license for a 1-year period; and

21 (ii) upon a second or subsequent refusal, suspend the person's commercial driver's license for life,
22 subject to department rules adopted to implement federal rules allowing for license reinstatement, if the person
23 is otherwise eligible, upon completion of a minimum suspension period of 10 years. If the person has a prior
24 conviction of a major offense listed in 61-8-802(2) arising from a separate incident, the conviction has the same
25 effect as a previous testing refusal for purposes of this subsection (6)(b).

26 (7) A nonresident driver's license seized under this section must be sent by the department to the
27 licensing authority of the nonresident's home state with a report of the nonresident's refusal to submit to one or
28 more tests.

29 (8) The department may recognize the seizure of a license of a tribal member by a peace officer acting
30 under the authority of a tribal government or an order issued by a tribal court suspending, revoking, or reinstating

1 a license or adjudicating a license seizure if the actions are conducted pursuant to tribal law or regulation
2 requiring alcohol or drug testing of motor vehicle operators and the conduct giving rise to the actions occurred
3 within the exterior boundaries of a federally recognized Indian reservation in this state. Action by the department
4 under this subsection is not reviewable under 61-8-403.

5 (9) A suspension under this section is subject to review as provided in this part.

6 (10) This section does not apply to ~~blood and breath~~ tests, samples, and analyses of blood or breath used
7 for purposes of medical treatment or care of an injured motorist, ~~or~~ related to a lawful seizure for a suspected
8 violation of an offense not in this part, or performed pursuant to a search warrant.

9 (11) This section does not prohibit the release of information obtained from tests, samples, and analyses
10 of blood or breath for law enforcement purposes as provided in 46-4-301 and 61-8-405(6)."

11
12 **Section 4.** Section 61-8-404, MCA, is amended to read:

13 **"61-8-404. Evidence admissible -- conditions of admissibility.** (1) Upon the trial of a criminal action
14 or other proceeding arising out of acts alleged to have been committed by a person in violation of 61-8-401,
15 61-8-406, 61-8-410, or 61-8-805:

16 (a) evidence of any measured amount or detected presence of alcohol, drugs, or a combination of
17 alcohol and drugs in the person at the time of a test, as shown by an analysis of the person's blood or breath, is
18 admissible. A positive test result does not, in itself, prove that the person was under the influence of a drug or
19 drugs at the time the person was in control of a motor vehicle. A person may not be convicted of a violation of
20 61-8-401 based upon the presence of a drug or drugs in the person unless some other competent evidence exists
21 that tends to establish that the person was under the influence of a drug or drugs while driving or in actual
22 physical control of a motor vehicle within this state.

23 (b) a report of the facts and results of one or more tests of a person's blood or breath is admissible in
24 evidence if:

25 (i) a breath test or preliminary alcohol screening test was performed by a person certified by the forensic
26 sciences division of the department to administer the test;

27 (ii) a blood sample was analyzed in a laboratory operated or certified by the department or in a laboratory
28 exempt from certification under the rules of the department and the blood was withdrawn from the person by a
29 person competent to do so under 61-8-405(1);

30 (c) a report of the facts and results of a physical, psychomotor, or physiological assessment of a person

1 is admissible in evidence if it was made by a person trained by the department or by a person who has received
2 training recognized by the department.

3 (2) If the person under arrest refused to submit to one or more tests ~~as provided in this section~~ under
4 61-8-402, whether or not a sample was subsequently collected for any purpose, proof of refusal is admissible in
5 any criminal action or proceeding arising out of acts alleged to have been committed while the person was driving
6 or in actual physical control of a vehicle upon the ways of this state open to the public, while under the influence
7 of alcohol, drugs, or a combination of alcohol and drugs. The trier of fact may infer from the refusal that the person
8 was under the influence. The inference is rebuttable.

9 (3) The provisions of this part do not limit the introduction of any other competent evidence bearing on
10 the question of whether the person was under the influence of alcohol, drugs, or a combination of alcohol and
11 drugs."

12
13 **Section 5.** Section 61-8-405, MCA, is amended to read:

14 **"61-8-405. Administration of tests.** (1) Only a physician, ~~or~~ registered nurse, or other qualified person
15 acting under the supervision and direction of a physician or registered nurse; may, at the request of a peace
16 officer, withdraw blood for the purpose of determining any measured amount or detected presence of alcohol,
17 drugs, or any combination of alcohol and drugs in the person. This limitation does not apply to the sampling of
18 breath.

19 (2) In addition to any test administered at the direction of a peace officer, a person may request that an
20 independent blood sample be drawn by a physician or registered nurse for the purpose of determining any
21 measured amount or detected presence of alcohol, drugs, or any combination of alcohol and drugs in the person.
22 The peace officer may not unreasonably impede the person's right to obtain an independent blood test. The
23 officer may but has no duty to transport the person to a medical facility or otherwise assist the person in obtaining
24 the test. The cost of an independent blood test is the sole responsibility of the person requesting the test. The
25 failure or inability to obtain an independent test by a person does not preclude the admissibility in evidence of any
26 test given at the direction of a peace officer.

27 (3) Upon the request of the person tested, full information concerning any test given at the direction of
28 the peace officer must be made available to the person or the person's attorney.

29 (4) A physician, ~~or~~ registered nurse, or other qualified person acting under the supervision and direction
30 of a physician or registered nurse; does not incur any civil or criminal liability as a result of the proper

1 administering of a blood test when requested in writing by a peace officer to administer a test.

2 (5) The department in cooperation with any appropriate agency shall adopt uniform rules for the giving
3 of tests and may require certification of training to administer the tests as considered necessary.

4 (6) If a peace officer has probable cause to believe that a person has violated 61-8-401, 61-8-406,
5 61-8-410, or 61-8-805 and a sample of blood, breath, urine, or other bodily substance is taken from that person
6 for any reason, a portion of that sample sufficient for analysis must be provided to a peace officer if requested
7 for law enforcement purposes and upon issuance of a subpoena as provided in 46-4-301."

8
9 NEW SECTION. Section 6. Codification instruction. [Section 2] is intended to be codified as an
10 integral part of Title 61, chapter 8, part 4, and the provisions of Title 61, chapter 8, part 4, apply to [section 2].

11
12 NEW SECTION. Section 7. Effective date. [This act] is effective on passage and approval.

13
14 NEW SECTION. Section 8. Applicability. [This act] applies to violations of Title 61, chapter 8, part 4,
15 that occur on or after [the effective date of this act].

16 - END -

SENATE BILL NO. 42

INTRODUCED BY J. SHOCKLEY

BY REQUEST OF THE LAW AND JUSTICE INTERIM COMMITTEE

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE LAWS RELATING TO ALCOHOL-RELATED OR DRUG-RELATED DRIVING OFFENSES; CLARIFYING THAT SEARCH WARRANTS MAY BE ISSUED FOR BLOOD SAMPLES IF THE OFFENDER HAS A PRIOR REFUSAL OR CONVICTION OR PENDING OFFENSE; REVISING THE IMPLIED CONSENT LAW; PROVIDING THAT A PEACE OFFICER MAY REQUEST A SEARCH WARRANT TO OBTAIN A BLOOD SAMPLE FOR CHEMICAL TESTING IF AN ARRESTED PERSON REFUSES TO SUBMIT TO TESTING; AMENDING SECTIONS 46-5-224, 61-8-402, 61-8-404, ~~AND~~ 61-8-405, AND 61-8-409, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 46-5-224, MCA, is amended to read:

"46-5-224. What may be seized with search warrant. A warrant may be issued under this section to search for and seize any:

(1) evidence, including blood samples that may yield evidence of any measured amount or detected presence of alcohol or drugs in a person's body when subjected to testing;

(2) contraband; or

(3) person for whose arrest there is probable cause, for whom there has been a warrant of arrest issued, or who is unlawfully restrained."

~~NEW SECTION. Section 2. Refusal to submit to test -- search warrant. (1) If a person refuses to submit to one or more tests requested and designated by a peace officer as provided in 61-8-402 and the officer has probable cause to believe that the person has been driving or has been in actual physical control of a vehicle upon ways of this state open to the public while under the influence of alcohol, drugs, or a combination of the two and the person has been placed under arrest for a violation of 61-8-401, 61-8-406, 61-8-410, or 61-8-805, a test or tests may be administered without the consent of the person provided that the officer first obtains a search warrant authorizing administration of the test or tests.~~

~~1 (2) The test or tests must be administered in accordance with 61-8-405.~~
~~2 (3) The results of a test performed pursuant to a search warrant are admissible as competent evidence~~
~~3 in any civil or criminal prosecution, subject to applicable rules of evidence.~~
~~4 (4) A person's right to refuse to submit to a test under 61-8-402(4) does not apply to this section.~~
~~5 (5) This section does not prevent law enforcement from obtaining tests without a warrant as otherwise~~
~~6 authorized by law.~~
~~7 (6) A subsequent consent to a test that was initially refused does not prevent the issuance of a search~~
~~8 warrant under this section.~~

9
10 **Section 2.** Section 61-8-402, MCA, is amended to read:

11 **"61-8-402. ~~Blood~~ Implied consent -- blood or breath tests for alcohol, drugs, or both -- refusal to**
12 **submit to test -- administrative license suspension.** (1) A person who operates or is in actual physical control
13 of a vehicle upon ways of this state open to the public is considered to have given consent to a test or tests of
14 the person's blood or breath for the purpose of determining any measured amount or detected presence of
15 alcohol or drugs in the person's body.

16 (2) (a) The test or tests must be administered at the direction of a peace officer when:

17 (i) the officer has reasonable grounds to believe that the person has been driving or has been in actual
18 physical control of a vehicle upon ways of this state open to the public while under the influence of alcohol, drugs,
19 or a combination of the two and the person has been placed under arrest for a violation of 61-8-401;

20 (ii) the person is under the age of 21 and has been placed under arrest for a violation of 61-8-410; or

21 (iii) the officer has probable cause to believe that the person was driving or in actual physical control of
22 a vehicle:

23 (A) in violation of 61-8-401 and the person has been involved in a motor vehicle accident or collision
24 resulting in property damage; or

25 (B) involved in a motor vehicle accident or collision resulting in serious bodily injury, as defined in
26 45-2-101, or death.

27 (b) The arresting or investigating officer may designate which test or tests are administered.

28 (3) A person who is unconscious or who is otherwise in a condition rendering the person incapable of
29 refusal is considered not to have withdrawn the consent provided by subsection (1).

30 (4) If an arrested person refuses to submit to one or more tests requested and designated by the officer

as provided in subsection (2), the refused test or tests may not be given, ~~but at the request of the officer unless authorized by a search warrant. Upon refusal,~~ EXCEPT AS PROVIDED IN SUBSECTION (5), BUT the officer shall, on behalf of the department, immediately seize the person's driver's license. The peace officer shall immediately forward the license to the department, along with a report certified under penalty of law stating which of the conditions set forth in subsection (2)(a) provides the basis for the testing request and confirming that the person refused to submit to one or more tests requested and designated by the peace officer. Upon receipt of the report, the department shall suspend the license for the period provided in subsection ~~(6)~~ (7).

(5) IF THE ARRESTED PERSON HAS REFUSED TO PROVIDE A BREATH, BLOOD, OR URINE SAMPLE UNDER 61-8-409 OR THIS SECTION IN A PRIOR INVESTIGATION IN THIS STATE OR UNDER A SUBSTANTIALLY SIMILAR STATUTE IN ANOTHER JURISDICTION OR THE ARRESTED PERSON HAS A PRIOR CONVICTION OR PENDING OFFENSE FOR A VIOLATION OF 45-5-104, 45-5-106, 45-5-205, 61-8-401, OR 61-8-406 OR A SIMILAR STATUTE IN ANOTHER JURISDICTION, THE OFFICER MAY OBTAIN A SEARCH WARRANT TO COLLECT A SAMPLE OF THE PERSON'S BLOOD FOR TESTING.

~~(5)(6)~~ Upon seizure of a driver's license, the peace officer shall issue, on behalf of the department, a temporary driving permit, which is effective 12 hours after issuance and is valid for 5 days following the date of issuance, and shall provide the driver with written notice of the license suspension and the right to a hearing provided in 61-8-403.

~~(6)(7)~~ (a) Except as provided in subsection ~~(6)(b)~~ (7)(B), the following suspension periods are applicable upon refusal to submit to one or more tests:

(i) upon a first refusal, a suspension of 6 months with no provision for a restricted probationary license;

(ii) upon a second or subsequent refusal within 5 years of a previous refusal, as determined from the records of the department, a suspension of 1 year with no provision for a restricted probationary license.

(b) If a person who refuses to submit to one or more tests under this section is the holder of a commercial driver's license, in addition to any action taken against the driver's noncommercial driving privileges, the department shall:

(i) upon a first refusal, suspend the person's commercial driver's license for a 1-year period; and

(ii) upon a second or subsequent refusal, suspend the person's commercial driver's license for life, subject to department rules adopted to implement federal rules allowing for license reinstatement, if the person is otherwise eligible, upon completion of a minimum suspension period of 10 years. If the person has a prior conviction of a major offense listed in 61-8-802(2) arising from a separate incident, the conviction has the same effect as a previous testing refusal for purposes of this subsection ~~(6)(b)~~ (7)(B).

(7)(8) A nonresident driver's license seized under this section must be sent by the department to the licensing authority of the nonresident's home state with a report of the nonresident's refusal to submit to one or more tests.

(8)(9) The department may recognize the seizure of a license of a tribal member by a peace officer acting under the authority of a tribal government or an order issued by a tribal court suspending, revoking, or reinstating a license or adjudicating a license seizure if the actions are conducted pursuant to tribal law or regulation requiring alcohol or drug testing of motor vehicle operators and the conduct giving rise to the actions occurred within the exterior boundaries of a federally recognized Indian reservation in this state. Action by the department under this subsection is not reviewable under 61-8-403.

(9)(10) A suspension under this section is subject to review as provided in this part.

(10)(11) This section does not apply to ~~blood and breath~~ tests, samples, and analyses of blood or breath used for purposes of medical treatment or care of an injured motorist, ~~or~~ related to a lawful seizure for a suspected violation of an offense not in this part, or performed pursuant to a search warrant.

(11)(12) This section does not prohibit the release of information obtained from tests, samples, and analyses of blood or breath for law enforcement purposes as provided in 46-4-301 and 61-8-405(6)."

Section 3. Section 61-8-404, MCA, is amended to read:

"61-8-404. Evidence admissible -- conditions of admissibility. (1) Upon the trial of a criminal action or other proceeding arising out of acts alleged to have been committed by a person in violation of 61-8-401, 61-8-406, 61-8-410, or 61-8-805:

(a) evidence of any measured amount or detected presence of alcohol, drugs, or a combination of alcohol and drugs in the person at the time of a test, as shown by an analysis of the person's blood or breath, is admissible. A positive test result does not, in itself, prove that the person was under the influence of a drug or drugs at the time the person was in control of a motor vehicle. A person may not be convicted of a violation of 61-8-401 based upon the presence of a drug or drugs in the person unless some other competent evidence exists that tends to establish that the person was under the influence of a drug or drugs while driving or in actual physical control of a motor vehicle within this state.

(b) a report of the facts and results of one or more tests of a person's blood or breath is admissible in evidence if:

(i) a breath test or preliminary alcohol screening test was performed by a person certified by the forensic

1 sciences division of the department to administer the test;

2 (ii) a blood sample was analyzed in a laboratory operated or certified by the department or in a laboratory
3 exempt from certification under the rules of the department and the blood was withdrawn from the person by a
4 person competent to do so under 61-8-405(1);

5 (c) a report of the facts and results of a physical, psychomotor, or physiological assessment of a person
6 is admissible in evidence if it was made by a person trained by the department or by a person who has received
7 training recognized by the department.

8 (2) If the person under arrest refused to submit to one or more tests ~~as provided in this section~~ under
9 61-8-402, whether or not a sample was subsequently collected for any purpose, proof of refusal is admissible in
10 any criminal action or proceeding arising out of acts alleged to have been committed while the person was driving
11 or in actual physical control of a vehicle upon the ways of this state open to the public, while under the influence
12 of alcohol, drugs, or a combination of alcohol and drugs. The trier of fact may infer from the refusal that the person
13 was under the influence. The inference is rebuttable.

14 (3) The provisions of this part do not limit the introduction of any other competent evidence bearing on
15 the question of whether the person was under the influence of alcohol, drugs, or a combination of alcohol and
16 drugs."

17
18 **Section 4.** Section 61-8-405, MCA, is amended to read:

19 **"61-8-405. Administration of tests.** (1) Only a physician, ~~or~~ registered nurse, or other qualified person
20 acting under the supervision and direction of a physician or registered nurse; may, at the request of a peace
21 officer, withdraw blood for the purpose of determining any measured amount or detected presence of alcohol,
22 drugs, or any combination of alcohol and drugs in the person. This limitation does not apply to the sampling of
23 breath.

24 (2) In addition to any test administered at the direction of a peace officer, a person may request that an
25 independent blood sample be drawn by a physician or registered nurse for the purpose of determining any
26 measured amount or detected presence of alcohol, drugs, or any combination of alcohol and drugs in the person.
27 The peace officer may not unreasonably impede the person's right to obtain an independent blood test. The
28 officer may but has no duty to transport the person to a medical facility or otherwise assist the person in obtaining
29 the test. The cost of an independent blood test is the sole responsibility of the person requesting the test. The
30 failure or inability to obtain an independent test by a person does not preclude the admissibility in evidence of any

1 test given at the direction of a peace officer.

2 (3) Upon the request of the person tested, full information concerning any test given at the direction of
3 the peace officer must be made available to the person or the person's attorney.

4 (4) A physician, ~~or~~ registered nurse, or other qualified person acting under the supervision and direction
5 of a physician or registered nurse; does not incur any civil or criminal liability as a result of the proper
6 administering of a blood test when requested in writing by a peace officer to administer a test.

7 (5) The department in cooperation with any appropriate agency shall adopt uniform rules for the giving
8 of tests and may require certification of training to administer the tests as considered necessary.

9 (6) If a peace officer has probable cause to believe that a person has violated 61-8-401, 61-8-406,
10 61-8-410, or 61-8-805 and a sample of blood, breath, urine, or other bodily substance is taken from that person
11 for any reason, a portion of that sample sufficient for analysis must be provided to a peace officer if requested
12 for law enforcement purposes and upon issuance of a subpoena as provided in 46-4-301."

13
14 **SECTION 5. SECTION 61-8-409, MCA, IS AMENDED TO READ:**

15 **"61-8-409. Preliminary alcohol screening test.** (1) A person who operates or is in actual physical
16 control of a vehicle upon ways of this state open to the public is considered to have given consent to a preliminary
17 alcohol screening test of the person's breath, for the purpose of estimating the person's alcohol concentration,
18 upon the request of a peace officer who has a particularized suspicion that the person was driving or in actual
19 physical control of a vehicle upon ways of this state open to the public while under the influence of alcohol or in
20 violation of 61-8-410.

21 (2) The person's obligation to submit to a test under 61-8-402 is not satisfied by the person submitting
22 to a preliminary alcohol screening test pursuant to this section.

23 (3) The peace officer shall inform the person of the right to refuse the test and that the refusal to submit
24 to the preliminary alcohol screening test will result in the suspension for up to 1 year of that person's driver's
25 license.

26 (4) If the person refuses to submit to a test under this section, a test will not be given except as provided
27 in 61-8-402(5). However, the refusal is sufficient cause to suspend the person's driver's license as provided in
28 61-8-402.

29 (5) A hearing as provided for in 61-8-403 must be available. The issues in the hearing must be limited
30 to determining whether a peace officer had a particularized suspicion that the person was driving or in actual

1 physical control of a vehicle upon ways of this state open to the public while under the influence of alcohol or in
2 violation of 61-8-410 and whether the person refused to submit to the test.

3 (6) The provisions of 61-8-402(3) through ~~(8)~~ (9) that do not conflict with this section are applicable to
4 refusals under this section. If a person refuses a test requested under 61-8-402 and this section for the same
5 incident, the department may not consider each a separate refusal for purposes of suspension under 61-8-402.

6 (7) A test may not be conducted or requested under this section unless both the peace officer and the
7 instrument used to conduct the preliminary alcohol screening test have been certified by the department pursuant
8 to rules adopted under the authority of 61-8-405(5)."

9
10 ~~NEW SECTION. Section 6. Codification instruction. [Section 2] is intended to be codified as an~~
11 ~~integral part of Title 61, chapter 8, part 4, and the provisions of Title 61, chapter 8, part 4, apply to [section 2].~~

12
13 NEW SECTION. Section 6. Effective date. [This act] is effective on passage and approval.

14
15 NEW SECTION. Section 7. Applicability. [This act] applies to violations of Title 61, chapter 8, part 4,
16 that occur on or after [the effective date of this act].

17 - END -

SENATE BILL NO. 42

INTRODUCED BY J. SHOCKLEY

BY REQUEST OF THE LAW AND JUSTICE INTERIM COMMITTEE

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE LAWS RELATING TO ALCOHOL-RELATED OR DRUG-RELATED DRIVING OFFENSES; CLARIFYING THAT SEARCH WARRANTS MAY BE ISSUED FOR BLOOD SAMPLES IF THE OFFENDER HAS A PRIOR REFUSAL OR CONVICTION OR PENDING OFFENSE; REVISING THE IMPLIED CONSENT LAW; PROVIDING THAT A PEACE OFFICER MAY REQUEST A SEARCH WARRANT TO OBTAIN A BLOOD SAMPLE FOR CHEMICAL TESTING IF AN ARRESTED PERSON REFUSES TO SUBMIT TO TESTING; AMENDING SECTIONS 46-5-224, 61-8-402, 61-8-404, ~~AND~~ 61-8-405, AND 61-8-409, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 46-5-224, MCA, is amended to read:

"46-5-224. What may be seized with search warrant. A warrant may be issued under this section to search for and seize any:

(1) evidence, including blood samples that may yield evidence of any measured amount or detected presence of alcohol or drugs in a person's body when subjected to testing;

(2) contraband; or

(3) person for whose arrest there is probable cause, for whom there has been a warrant of arrest issued, or who is unlawfully restrained."

~~NEW SECTION. Section 2. Refusal to submit to test -- search warrant. (1) If a person refuses to submit to one or more tests requested and designated by a peace officer as provided in 61-8-402 and the officer has probable cause to believe that the person has been driving or has been in actual physical control of a vehicle upon ways of this state open to the public while under the influence of alcohol, drugs, or a combination of the two and the person has been placed under arrest for a violation of 61-8-401, 61-8-406, 61-8-410, or 61-8-805, a test or tests may be administered without the consent of the person provided that the officer first obtains a search warrant authorizing administration of the test or tests.~~

1 ~~—— (2) The test or tests must be administered in accordance with 61-8-405.~~
2 ~~—— (3) The results of a test performed pursuant to a search warrant are admissible as competent evidence~~
3 ~~in any civil or criminal prosecution, subject to applicable rules of evidence.~~
4 ~~—— (4) A person's right to refuse to submit to a test under 61-8-402(4) does not apply to this section.~~
5 ~~—— (5) This section does not prevent law enforcement from obtaining tests without a warrant as otherwise~~
6 ~~authorized by law.~~
7 ~~—— (6) A subsequent consent to a test that was initially refused does not prevent the issuance of a search~~
8 ~~warrant under this section.~~

10 **Section 2.** Section 61-8-402, MCA, is amended to read:

11 **"61-8-402. Blood Implied consent -- blood or breath tests for alcohol, drugs, or both -- refusal to**
12 **submit to test -- administrative license suspension.** (1) A person who operates or is in actual physical control
13 of a vehicle upon ways of this state open to the public is considered to have given consent to a test or tests of
14 the person's blood or breath for the purpose of determining any measured amount or detected presence of
15 alcohol or drugs in the person's body.

16 (2) (a) The test or tests must be administered at the direction of a peace officer when:

17 (i) the officer has reasonable grounds to believe that the person has been driving or has been in actual
18 physical control of a vehicle upon ways of this state open to the public while under the influence of alcohol, drugs,
19 or a combination of the two and the person has been placed under arrest for a violation of 61-8-401;

20 (ii) the person is under the age of 21 and has been placed under arrest for a violation of 61-8-410; or

21 (iii) the officer has probable cause to believe that the person was driving or in actual physical control of
22 a vehicle:

23 (A) in violation of 61-8-401 and the person has been involved in a motor vehicle accident or collision
24 resulting in property damage; or

25 (B) involved in a motor vehicle accident or collision resulting in serious bodily injury, as defined in
26 45-2-101, or death.

27 (b) The arresting or investigating officer may designate which test or tests are administered.

28 (3) A person who is unconscious or who is otherwise in a condition rendering the person incapable of
29 refusal is considered not to have withdrawn the consent provided by subsection (1).

30 (4) If an arrested person refuses to submit to one or more tests requested and designated by the officer

as provided in subsection (2), the refused test or tests may not be given, ~~but at the request of the officer unless authorized by a search warrant. Upon refusal,~~ EXCEPT AS PROVIDED IN SUBSECTION (5), BUT the officer shall, on behalf of the department, immediately seize the person's driver's license. The peace officer shall immediately forward the license to the department, along with a report certified under penalty of law stating which of the conditions set forth in subsection (2)(a) provides the basis for the testing request and confirming that the person refused to submit to one or more tests requested and designated by the peace officer. Upon receipt of the report, the department shall suspend the license for the period provided in subsection ~~(6)~~ (7).

(5) IF THE ARRESTED PERSON HAS REFUSED TO PROVIDE A BREATH, BLOOD, OR URINE SAMPLE UNDER 61-8-409 OR THIS SECTION IN A PRIOR INVESTIGATION IN THIS STATE OR UNDER A SUBSTANTIALLY SIMILAR STATUTE IN ANOTHER JURISDICTION OR THE ARRESTED PERSON HAS A PRIOR CONVICTION OR PENDING OFFENSE FOR A VIOLATION OF 45-5-104, 45-5-106, 45-5-205, 61-8-401, OR 61-8-406 OR A SIMILAR STATUTE IN ANOTHER JURISDICTION, THE OFFICER MAY OBTAIN MAY APPLY FOR A SEARCH WARRANT TO BE ISSUED PURSUANT TO 46-5-224 TO COLLECT A SAMPLE OF THE PERSON'S BLOOD FOR TESTING.

~~(5)(6)~~ Upon seizure of a driver's license, the peace officer shall issue, on behalf of the department, a temporary driving permit, which is effective 12 hours after issuance and is valid for 5 days following the date of issuance, and shall provide the driver with written notice of the license suspension and the right to a hearing provided in 61-8-403.

~~(6)(7)~~ (a) Except as provided in subsection ~~(6)(b)~~ (7)(B), the following suspension periods are applicable upon refusal to submit to one or more tests:

(i) upon a first refusal, a suspension of 6 months with no provision for a restricted probationary license;

(ii) upon a second or subsequent refusal within 5 years of a previous refusal, as determined from the records of the department, a suspension of 1 year with no provision for a restricted probationary license.

(b) If a person who refuses to submit to one or more tests under this section is the holder of a commercial driver's license, in addition to any action taken against the driver's noncommercial driving privileges, the department shall:

(i) upon a first refusal, suspend the person's commercial driver's license for a 1-year period; and

(ii) upon a second or subsequent refusal, suspend the person's commercial driver's license for life, subject to department rules adopted to implement federal rules allowing for license reinstatement, if the person is otherwise eligible, upon completion of a minimum suspension period of 10 years. If the person has a prior conviction of a major offense listed in 61-8-802(2) arising from a separate incident, the conviction has the same

effect as a previous testing refusal for purposes of this subsection ~~(6)(b)~~ (7)(B).

~~(7)(8)~~ A nonresident driver's license seized under this section must be sent by the department to the licensing authority of the nonresident's home state with a report of the nonresident's refusal to submit to one or more tests.

~~(8)(9)~~ The department may recognize the seizure of a license of a tribal member by a peace officer acting under the authority of a tribal government or an order issued by a tribal court suspending, revoking, or reinstating a license or adjudicating a license seizure if the actions are conducted pursuant to tribal law or regulation requiring alcohol or drug testing of motor vehicle operators and the conduct giving rise to the actions occurred within the exterior boundaries of a federally recognized Indian reservation in this state. Action by the department under this subsection is not reviewable under 61-8-403.

~~(9)(10)~~ A suspension under this section is subject to review as provided in this part.

~~(10)(11)~~ This section does not apply to ~~blood and breath~~ tests, samples, and analyses of blood or breath used for purposes of medical treatment or care of an injured motorist, ~~or~~ related to a lawful seizure for a suspected violation of an offense not in this part, or performed pursuant to a search warrant.

~~(11)(12)~~ This section does not prohibit the release of information obtained from tests, samples, and analyses of blood or breath for law enforcement purposes as provided in 46-4-301 and 61-8-405(6)."

Section 3. Section 61-8-404, MCA, is amended to read:

"61-8-404. Evidence admissible -- conditions of admissibility. (1) Upon the trial of a criminal action or other proceeding arising out of acts alleged to have been committed by a person in violation of 61-8-401, 61-8-406, 61-8-410, or 61-8-805:

(a) evidence of any measured amount or detected presence of alcohol, drugs, or a combination of alcohol and drugs in the person at the time of a test, as shown by an analysis of the person's blood or breath, is admissible. A positive test result does not, in itself, prove that the person was under the influence of a drug or drugs at the time the person was in control of a motor vehicle. A person may not be convicted of a violation of 61-8-401 based upon the presence of a drug or drugs in the person unless some other competent evidence exists that tends to establish that the person was under the influence of a drug or drugs while driving or in actual physical control of a motor vehicle within this state.

(b) a report of the facts and results of one or more tests of a person's blood or breath is admissible in evidence if:

1 (i) a breath test or preliminary alcohol screening test was performed by a person certified by the forensic
2 sciences division of the department to administer the test;

3 (ii) a blood sample was analyzed in a laboratory operated or certified by the department or in a laboratory
4 exempt from certification under the rules of the department and the blood was withdrawn from the person by a
5 person competent to do so under 61-8-405(1);

6 (c) a report of the facts and results of a physical, psychomotor, or physiological assessment of a person
7 is admissible in evidence if it was made by a person trained by the department or by a person who has received
8 training recognized by the department.

9 (2) If the person under arrest refused to submit to one or more tests ~~as provided in this section under~~
10 61-8-402, whether or not a sample was subsequently collected for any purpose, proof of refusal is admissible in
11 any criminal action or proceeding arising out of acts alleged to have been committed while the person was driving
12 or in actual physical control of a vehicle upon the ways of this state open to the public, while under the influence
13 of alcohol, drugs, or a combination of alcohol and drugs. The trier of fact may infer from the refusal that the person
14 was under the influence. The inference is rebuttable.

15 (3) The provisions of this part do not limit the introduction of any other competent evidence bearing on
16 the question of whether the person was under the influence of alcohol, drugs, or a combination of alcohol and
17 drugs."

18
19 **Section 4.** Section 61-8-405, MCA, is amended to read:

20 **"61-8-405. Administration of tests.** (1) Only a physician, ~~or~~ registered nurse, or other qualified person
21 acting under the supervision and direction of a physician or registered nurse; may, at the request of a peace
22 officer, withdraw blood for the purpose of determining any measured amount or detected presence of alcohol,
23 drugs, or any combination of alcohol and drugs in the person. This limitation does not apply to the sampling of
24 breath.

25 (2) In addition to any test administered at the direction of a peace officer, a person may request that an
26 independent blood sample be drawn by a physician or registered nurse for the purpose of determining any
27 measured amount or detected presence of alcohol, drugs, or any combination of alcohol and drugs in the person.
28 The peace officer may not unreasonably impede the person's right to obtain an independent blood test. The
29 officer may but has no duty to transport the person to a medical facility or otherwise assist the person in obtaining
30 the test. The cost of an independent blood test is the sole responsibility of the person requesting the test. The

1 failure or inability to obtain an independent test by a person does not preclude the admissibility in evidence of any
2 test given at the direction of a peace officer.

3 (3) Upon the request of the person tested, full information concerning any test given at the direction of
4 the peace officer must be made available to the person or the person's attorney.

5 (4) A physician, ~~or~~ registered nurse, or other qualified person acting under the supervision and direction
6 of a physician or registered nurse, does not incur any civil or criminal liability as a result of the proper
7 administering of a blood test when requested in writing by a peace officer to administer a test.

8 (5) The department in cooperation with any appropriate agency shall adopt uniform rules for the giving
9 of tests and may require certification of training to administer the tests as considered necessary.

10 (6) If a peace officer has probable cause to believe that a person has violated 61-8-401, 61-8-406,
11 61-8-410, or 61-8-805 and a sample of blood, breath, urine, or other bodily substance is taken from that person
12 for any reason, a portion of that sample sufficient for analysis must be provided to a peace officer if requested
13 for law enforcement purposes and upon issuance of a subpoena as provided in 46-4-301."

14
15 **SECTION 5. SECTION 61-8-409, MCA, IS AMENDED TO READ:**

16 **"61-8-409. Preliminary alcohol screening test.** (1) A person who operates or is in actual physical
17 control of a vehicle upon ways of this state open to the public is considered to have given consent to a preliminary
18 alcohol screening test of the person's breath, for the purpose of estimating the person's alcohol concentration,
19 upon the request of a peace officer who has a particularized suspicion that the person was driving or in actual
20 physical control of a vehicle upon ways of this state open to the public while under the influence of alcohol or in
21 violation of 61-8-410.

22 (2) The person's obligation to submit to a test under 61-8-402 is not satisfied by the person submitting
23 to a preliminary alcohol screening test pursuant to this section.

24 (3) The peace officer shall inform the person of the right to refuse the test and that the refusal to submit
25 to the preliminary alcohol screening test will result in the suspension for up to 1 year of that person's driver's
26 license.

27 (4) If the person refuses to submit to a test under this section, a test will not be given except as provided
28 in 61-8-402(5). However, the refusal is sufficient cause to suspend the person's driver's license as provided in
29 61-8-402.

30 (5) A hearing as provided for in 61-8-403 must be available. The issues in the hearing must be limited

1 to determining whether a peace officer had a particularized suspicion that the person was driving or in actual
2 physical control of a vehicle upon ways of this state open to the public while under the influence of alcohol or in
3 violation of 61-8-410 and whether the person refused to submit to the test.

4 (6) The provisions of 61-8-402(3) through ~~(8)~~ (9) that do not conflict with this section are applicable to
5 refusals under this section. If a person refuses a test requested under 61-8-402 and this section for the same
6 incident, the department may not consider each a separate refusal for purposes of suspension under 61-8-402.

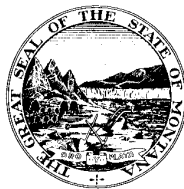
7 (7) A test may not be conducted or requested under this section unless both the peace officer and the
8 instrument used to conduct the preliminary alcohol screening test have been certified by the department pursuant
9 to rules adopted under the authority of 61-8-405(5)."

10
11 ~~NEW SECTION. Section 6. Codification instruction. [Section 2] is intended to be codified as an~~
12 ~~integral part of Title 61, chapter 8, part 4, and the provisions of Title 61, chapter 8, part 4, apply to [section 2].~~

13
14 NEW SECTION. Section 6. Effective date. [This act] is effective on passage and approval.

15
16 NEW SECTION. Section 7. Applicability. [This act] applies to violations of Title 61, chapter 8, part 4,
17 that occur on or after [the effective date of this act].

18 - END -



AN ACT REVISING THE LAWS RELATING TO ALCOHOL-RELATED OR DRUG-RELATED DRIVING OFFENSES; CLARIFYING THAT SEARCH WARRANTS MAY BE ISSUED FOR BLOOD SAMPLES IF THE OFFENDER HAS A PRIOR REFUSAL OR CONVICTION OR PENDING OFFENSE; REVISING THE IMPLIED CONSENT LAW; PROVIDING THAT A PEACE OFFICER MAY REQUEST A SEARCH WARRANT TO OBTAIN A BLOOD SAMPLE FOR CHEMICAL TESTING; AMENDING SECTIONS 46-5-224, 61-8-402, 61-8-404, 61-8-405, AND 61-8-409, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 46-5-224, MCA, is amended to read:

"46-5-224. What may be seized with search warrant. A warrant may be issued under this section to search for and seize any:

(1) evidence, including blood samples that may yield evidence of any measured amount or detected presence of alcohol or drugs in a person's body when subjected to testing;

(2) contraband; or

(3) person for whose arrest there is probable cause, for whom there has been a warrant of arrest issued, or who is unlawfully restrained."

Section 2. Section 61-8-402, MCA, is amended to read:

"61-8-402. ~~Blood~~ Implied consent -- blood or breath tests for alcohol, drugs, or both -- refusal to submit to test -- administrative license suspension. (1) A person who operates or is in actual physical control of a vehicle upon ways of this state open to the public is considered to have given consent to a test or tests of the person's blood or breath for the purpose of determining any measured amount or detected presence of alcohol or drugs in the person's body.

(2) (a) The test or tests must be administered at the direction of a peace officer when:

(i) the officer has reasonable grounds to believe that the person has been driving or has been in actual physical control of a vehicle upon ways of this state open to the public while under the influence of alcohol, drugs, or a combination of the two and the person has been placed under arrest for a violation of 61-8-401;

(ii) the person is under the age of 21 and has been placed under arrest for a violation of 61-8-410; or

(iii) the officer has probable cause to believe that the person was driving or in actual physical control of a vehicle:

(A) in violation of 61-8-401 and the person has been involved in a motor vehicle accident or collision resulting in property damage; or

(B) involved in a motor vehicle accident or collision resulting in serious bodily injury, as defined in 45-2-101, or death.

(b) The arresting or investigating officer may designate which test or tests are administered.

(3) A person who is unconscious or who is otherwise in a condition rendering the person incapable of refusal is considered not to have withdrawn the consent provided by subsection (1).

(4) If an arrested person refuses to submit to one or more tests requested and designated by the officer as provided in subsection (2), the refused test or tests may not be given, ~~but~~ except as provided in subsection (5), but the officer shall, on behalf of the department, immediately seize the person's driver's license. The peace officer shall immediately forward the license to the department, along with a report certified under penalty of law stating which of the conditions set forth in subsection (2)(a) provides the basis for the testing request and confirming that the person refused to submit to one or more tests requested and designated by the peace officer. Upon receipt of the report, the department shall suspend the license for the period provided in subsection ~~(6)~~ (7).

(5) If the arrested person has refused to provide a breath, blood, or urine sample under 61-8-409 or this section in a prior investigation in this state or under a substantially similar statute in another jurisdiction or the arrested person has a prior conviction or pending offense for a violation of 45-5-104, 45-5-106, 45-5-205, 61-8-401, or 61-8-406 or a similar statute in another jurisdiction, the officer may apply for a search warrant to be issued pursuant to 46-5-224 to collect a sample of the person's blood for testing.

~~(5)(6)~~ Upon seizure of a driver's license, the peace officer shall issue, on behalf of the department, a temporary driving permit, which is effective 12 hours after issuance and is valid for 5 days following the date of issuance, and shall provide the driver with written notice of the license suspension and the right to a hearing provided in 61-8-403.

~~(6)(7)~~ (a) Except as provided in subsection ~~(6)(b)~~ (7)(b), the following suspension periods are applicable upon refusal to submit to one or more tests:

- (i) upon a first refusal, a suspension of 6 months with no provision for a restricted probationary license;
- (ii) upon a second or subsequent refusal within 5 years of a previous refusal, as determined from the records of the department, a suspension of 1 year with no provision for a restricted probationary license.

(b) If a person who refuses to submit to one or more tests under this section is the holder of a commercial driver's license, in addition to any action taken against the driver's noncommercial driving privileges, the department shall:

- (i) upon a first refusal, suspend the person's commercial driver's license for a 1-year period; and
- (ii) upon a second or subsequent refusal, suspend the person's commercial driver's license for life, subject to department rules adopted to implement federal rules allowing for license reinstatement, if the person is otherwise eligible, upon completion of a minimum suspension period of 10 years. If the person has a prior conviction of a major offense listed in 61-8-802(2) arising from a separate incident, the conviction has the same effect as a previous testing refusal for purposes of this subsection ~~(6)(b)~~ (7)(b).

~~(7)(8)~~ A nonresident driver's license seized under this section must be sent by the department to the licensing authority of the nonresident's home state with a report of the nonresident's refusal to submit to one or more tests.

~~(8)(9)~~ The department may recognize the seizure of a license of a tribal member by a peace officer acting under the authority of a tribal government or an order issued by a tribal court suspending, revoking, or reinstating a license or adjudicating a license seizure if the actions are conducted pursuant to tribal law or regulation requiring alcohol or drug testing of motor vehicle operators and the conduct giving rise to the actions occurred within the exterior boundaries of a federally recognized Indian reservation in this state. Action by the department under this subsection is not reviewable under 61-8-403.

~~(9)(10)~~ A suspension under this section is subject to review as provided in this part.

~~(10)(11)~~ This section does not apply to ~~blood and breath~~ tests, samples, and analyses of blood or breath used for purposes of medical treatment or care of an injured motorist, ~~or~~ related to a lawful seizure for a suspected violation of an offense not in this part, or performed pursuant to a search warrant.

(12) This section does not prohibit the release of information obtained from tests, samples, and analyses of blood or breath for law enforcement purposes as provided in 46-4-301 and 61-8-405(6)."

Section 3. Section 61-8-404, MCA, is amended to read:

"61-8-404. Evidence admissible -- conditions of admissibility. (1) Upon the trial of a criminal action or other proceeding arising out of acts alleged to have been committed by a person in violation of 61-8-401, 61-8-406, 61-8-410, or 61-8-805:

(a) evidence of any measured amount or detected presence of alcohol, drugs, or a combination of alcohol and drugs in the person at the time of a test, as shown by an analysis of the person's blood or breath, is admissible. A positive test result does not, in itself, prove that the person was under the influence of a drug or drugs at the time the person was in control of a motor vehicle. A person may not be convicted of a violation of 61-8-401 based upon the presence of a drug or drugs in the person unless some other competent evidence exists that tends to establish that the person was under the influence of a drug or drugs while driving or in actual physical control of a motor vehicle within this state.

(b) a report of the facts and results of one or more tests of a person's blood or breath is admissible in evidence if:

(i) a breath test or preliminary alcohol screening test was performed by a person certified by the forensic sciences division of the department to administer the test;

(ii) a blood sample was analyzed in a laboratory operated or certified by the department or in a laboratory exempt from certification under the rules of the department and the blood was withdrawn from the person by a person competent to do so under 61-8-405(1);

(c) a report of the facts and results of a physical, psychomotor, or physiological assessment of a person is admissible in evidence if it was made by a person trained by the department or by a person who has received training recognized by the department.

(2) If the person under arrest refused to submit to one or more tests ~~as provided in this section under 61-8-402, whether or not a sample was subsequently collected for any purpose~~, proof of refusal is admissible in any criminal action or proceeding arising out of acts alleged to have been committed while the person was driving or in actual physical control of a vehicle upon the ways of this state open to the public, while under the influence of alcohol, drugs, or a combination of alcohol and drugs. The trier of fact may infer from the refusal that the person was under the influence. The inference is rebuttable.

(3) The provisions of this part do not limit the introduction of any other competent evidence bearing on

the question of whether the person was under the influence of alcohol, drugs, or a combination of alcohol and drugs."

Section 4. Section 61-8-405, MCA, is amended to read:

"61-8-405. Administration of tests. (1) Only a physician, ~~or~~ registered nurse, or other qualified person acting under the supervision and direction of a physician or registered nurse; may, at the request of a peace officer, withdraw blood for the purpose of determining any measured amount or detected presence of alcohol, drugs, or any combination of alcohol and drugs in the person. This limitation does not apply to the sampling of breath.

(2) In addition to any test administered at the direction of a peace officer, a person may request that an independent blood sample be drawn by a physician or registered nurse for the purpose of determining any measured amount or detected presence of alcohol, drugs, or any combination of alcohol and drugs in the person. The peace officer may not unreasonably impede the person's right to obtain an independent blood test. The officer may but has no duty to transport the person to a medical facility or otherwise assist the person in obtaining the test. The cost of an independent blood test is the sole responsibility of the person requesting the test. The failure or inability to obtain an independent test by a person does not preclude the admissibility in evidence of any test given at the direction of a peace officer.

(3) Upon the request of the person tested, full information concerning any test given at the direction of the peace officer must be made available to the person or the person's attorney.

(4) A physician, ~~or~~ registered nurse, or other qualified person acting under the supervision and direction of a physician or registered nurse; does not incur any civil or criminal liability as a result of the proper administering of a blood test when requested in writing by a peace officer to administer a test.

(5) The department in cooperation with any appropriate agency shall adopt uniform rules for the giving of tests and may require certification of training to administer the tests as considered necessary.

(6) If a peace officer has probable cause to believe that a person has violated 61-8-401, 61-8-406, 61-8-410, or 61-8-805 and a sample of blood, breath, urine, or other bodily substance is taken from that person for any reason, a portion of that sample sufficient for analysis must be provided to a peace officer if requested for law enforcement purposes and upon issuance of a subpoena as provided in 46-4-301."

Section 5. Section 61-8-409, MCA, is amended to read:

"61-8-409. Preliminary alcohol screening test. (1) A person who operates or is in actual physical control of a vehicle upon ways of this state open to the public is considered to have given consent to a preliminary alcohol screening test of the person's breath, for the purpose of estimating the person's alcohol concentration, upon the request of a peace officer who has a particularized suspicion that the person was driving or in actual physical control of a vehicle upon ways of this state open to the public while under the influence of alcohol or in violation of 61-8-410.

(2) The person's obligation to submit to a test under 61-8-402 is not satisfied by the person submitting to a preliminary alcohol screening test pursuant to this section.

(3) The peace officer shall inform the person of the right to refuse the test and that the refusal to submit to the preliminary alcohol screening test will result in the suspension for up to 1 year of that person's driver's license.

(4) If the person refuses to submit to a test under this section, a test will not be given except as provided in 61-8-402(5). However, the refusal is sufficient cause to suspend the person's driver's license as provided in 61-8-402.

(5) A hearing as provided for in 61-8-403 must be available. The issues in the hearing must be limited to determining whether a peace officer had a particularized suspicion that the person was driving or in actual physical control of a vehicle upon ways of this state open to the public while under the influence of alcohol or in violation of 61-8-410 and whether the person refused to submit to the test.

(6) The provisions of 61-8-402(3) through ~~(8)~~ (9) that do not conflict with this section are applicable to refusals under this section. If a person refuses a test requested under 61-8-402 and this section for the same incident, the department may not consider each a separate refusal for purposes of suspension under 61-8-402.

(7) A test may not be conducted or requested under this section unless both the peace officer and the instrument used to conduct the preliminary alcohol screening test have been certified by the department pursuant to rules adopted under the authority of 61-8-405(5)."

Section 6. Effective date. [This act] is effective on passage and approval.

Section 7. Applicability. [This act] applies to violations of Title 61, chapter 8, part 4, that occur on or

after [the effective date of this act].

- END -

I hereby certify that the within bill,
SB 0042, originated in the Senate.

Secretary of the Senate

President of the Senate

Signed this _____ day
of _____, 2011.

Speaker of the House

Signed this _____ day
of _____, 2011.

SENATE BILL NO. 42
INTRODUCED BY J. SHOCKLEY
BY REQUEST OF THE LAW AND JUSTICE INTERIM COMMITTEE

AN ACT REVISING THE LAWS RELATING TO ALCOHOL-RELATED OR DRUG-RELATED DRIVING OFFENSES; CLARIFYING THAT SEARCH WARRANTS MAY BE ISSUED FOR BLOOD SAMPLES IF THE OFFENDER HAS A PRIOR REFUSAL OR CONVICTION OR PENDING OFFENSE; REVISING THE IMPLIED CONSENT LAW; PROVIDING THAT A PEACE OFFICER MAY REQUEST A SEARCH WARRANT TO OBTAIN A BLOOD SAMPLE FOR CHEMICAL TESTING; AMENDING SECTIONS 46-5-224, 61-8-402, 61-8-404, 61-8-405, AND 61-8-409, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE.



GOVERNOR'S OFFICE OF
BUDGET AND PROGRAM PLANNING

Fiscal Note 2013 Biennium

Bill #	SB0042	Title:	Authorize warrants to obtain blood or breath test in DUI cases
Primary Sponsor:	Shockley, Jim	Status:	As Introduced

- | | | |
|---|--|--|
| ☐ Significant Local Gov Impact | ☐ Needs to be included in HB 2 | ☐ Technical Concerns |
| ☐ Included in the Executive Budget | ☐ Significant Long-Term Impacts | ☐ Dedicated Revenue Form Attached |

FISCAL SUMMARY

	<u>FY 2012 Difference</u>	<u>FY 2013 Difference</u>	<u>FY 2014 Difference</u>	<u>FY 2015 Difference</u>
Expenditures:				
General Fund	\$0	\$0	\$0	\$0
Revenue:				
General Fund	\$0	\$0	\$0	\$0
Net Impact-General Fund Balance:	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>

Description of fiscal impact: SB 42 revises the laws relating to alcohol and drug related driving offenses and authorizes peace officers to obtain a search warrant to administer tests if they have probable cause and a person refuses to give consent. The Department of Justice (DOJ) does not anticipate a fiscal impact due to this legislation but it could increase the backlog at the state forensic lab. The Judicial Branch does not foresee any substantial fiscal impact but could see an increase in district court criminal cases due to this legislation.

Sponsor's Initials

Date

Budget Director's Initials

Date

MINUTES

MONTANA SENATE 62nd LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: Chair Jim Shockley, on January 20, 2011 at 9:00 AM, in Room 303 Capitol

ROLL CALL

Members Present:

Sen. Jim Shockley, Chair (R)
Sen. Terry Murphy, Vice Chair (R)
Sen. Shannon Augare (D)
Sen. Anders Blewett (D)
Sen. Greg Hinkle (R)
Sen. Rowlie Hutton (R)
Sen. Larry Jent (D)
Sen. Cliff Larsen (D)
Sen. Lynda Moss (D)
Sen. Jim Peterson (R)

Members Excused: None

Members Absent: Sen. Chas Vincent (R)

Staff Present: Valencia Lane, Legislative Branch
Pam Schindler, Committee Secretary

Audio Committees: These minutes are in outline form only. They provide a list of participants and a record of official action taken by the committee. The link to the audio recording of the meeting is available on the Legislative Branch website.

Committee Business Summary:

Hearing & Date Posted: SB 24, 1/13/2011; SB 39, 1/13/2011; SB 40, 1/13/2011; SB 42, 1/13/2011

Executive Action: SB 39-Do Pass, SB 24-Do Pass

Committee Business:

00:05:11 Sen. Shockley
00:01:10 Sen. Augare
00:01:56 Sen. Peterson
00:02:37 Sen. Larsen
00:03:05 Sen. Blewett
00:04:49 Sen. Hutton
00:05:29 Sen. Moss
00:06:21 Sen. Jent
00:06:58 Sen. Hinkle
00:07:28 Sen. Murphy

HEARING ON SB 39

Opening Statement by Sponsor:

00:09:28 Sen. Jim Shockley (R), SD 45, opened the hearing on SB 39, Allow game wardens to issue MIP citations.

Proponents' Testimony:

00:11:29 Joe Maurier, Director, Fish, Wildlife and Parks, State of Montana (FWP)
[EXHIBIT\(jus15a01\)](#)
[EXHIBIT\(jus15a02\)](#)
[EXHIBIT\(jus15a03\)](#)
[EXHIBIT\(jus15a04\)](#)
[EXHIBIT\(jus15a05\)](#)
[EXHIBIT\(jus15a06\)](#)
00:17:32 George Golie, Montana Game Wardens Association
00:20:23 Kris Minard, self

Opponents' Testimony:

None

Informational Testimony:

00:21:35 Jim Smith, Montana County Attorneys Association (MCAA), Montana Sheriffs and Peace Officers Association (MSPOA)

Questions from Committee Members and Responses:

00:22:31 Sen. Hinkle
00:23:15 Jim Kropp, Chief, Enforcement Division, FWP
00:24:45 Kevin Cook, Game Warden, FWP
00:25:54 Sen. Jent
00:26:45 Mr. Cook

00:27:47 Sen. Jent
00:28:40 Mr. Kropp,
00:29:10 Sen. Larsen
00:29:55 Mr. Cook

Closing by Sponsor:

00:32:44 Sen. Shockley

HEARING ON SB 24

Opening Statement by Sponsor:

00:33:48 Sen. Jim Shockley (R), SD 45, opened the hearing on SB 24, Revise involuntary commitment of alcoholics.

Proponents' Testimony:

00:36:08 Donald Harr, retired psychiatrist, American Foundation for Suicide Prevention/Montana Chapter

Opponents' Testimony:

None

Informational Testimony:

00:40:35 Larry Epstein, MCCA, Montana Chiefs of Police Association (MCPA), Montana Police Protective Association (MPPA)

Questions from Committee Members and Responses:

None

Closing by Sponsor:

00:42:08 Sen. Shockley

(Without objection, Chairman Murphy allowed Sen. Shockley to present both bills at the same time due to their similarities. Persons testifying will indicate which or both bills they are supporting or opposing)

HEARING ON SB 40, HEARING ON SB 42

Opening Statement by Sponsor:

00:43:37 Sen. Jim Shockley (R), SD 45, opened the hearing on SB 40, Statewide on-call judge for search warrants.

Sen. Jim Shockley (R), SD 45, opened the hearing on SB 42, Authorize warrants to obtain blood or breath test in DUI cases

Proponents' Testimony:

00:53:04 Mark Murphy, MCCA, MCPA, MPPA (both bills)
01:01:14 Scott Twito, Yellowstone County Attorney (SB 42)
01:04:37 Ali Bovingdon, Assistant Attorney General, Department of Justice (DOJ) (SB 42)
01:07:57 Rebecca Sturdevant, Mothers Against Drunk Driving (MADD) (SB 42)
01:13:39 Dave Carter, Senior Deputy County Attorney, Yellowstone County (SB 42)
01:16:31 Kris Minard, self (both bills)
01:17:55 Nikki Zupanic, American Civil Liberties Union (ACLU) (SB 42; not in support of Sen. Shockley's proposed amendment however)
01:22:19 Jessie Luther, Association of Montana Troopers (both bills)

Opponents' Testimony:

01:23:15 Larry Carver, Justice of the Peace, Judith Basin County, Montana Magistrates Association (SB 40)

EXHIBIT(jus15a07)

01:33:57 Harold Blattie, Executive Director, Montana Association of Counties (MACo) (SB 40)

EXHIBIT(jus15a08)

01:38:52 Mary Phippen, Montana Association of Clerks of District Court (SB 40)
01:40:20 Elena Gagliano, self (both bills)
01:44:00 Sen. Augare
01:44:21 Ms. Gagliano

Informational Testimony:

None

Questions from Committee Members and Responses:

01:45:15 Sen. Blewett
01:46:07 Mr. Carver
01:47:25 Sen. Blewett
01:47:51 Ms. Bovingdon

Closing by Sponsor:

01:48:42 Sen. Shockley

Comments:

01:52:33 Sen Shockley

(Sen. Peterson and Sen. Vincent absent from the room)

EXECUTIVE ACTION ON SB 39

01:53:44 **Motion/Vote:** Sen. Shockley moved that **SB 39 DO PASS**. Motion carried unanimously by roll call vote. Sen. Peterson and Sen. Vincent voted by proxy.

EXECUTIVE ACTION ON SB 24

01:56:11 **Motion/Vote:** Sen. Shockley moved that **SB 24 DO PASS**. Motion carried 10-1 by roll call vote with Sen. Hinkle voting no. Sen. Peterson and Sen. Vincent voted by proxy.

Exhibit Distributed To Committee Members at the Conclusion of Hearing RE: SB 39

EXHIBIT(jus15a09)

ADJOURNMENT

Adjournment: 10:58 A.M.

Pam Schindler, Secretary

ps

Additional Documents:

EXHIBIT([jus15aad.pdf](#))

MINUTES

MONTANA SENATE 62nd LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: Chair Terry Murphy, on February 14, 2011 at 10:00 A.M., in Room 405 Capitol

ROLL CALL

Members Present:

Sen. Terry Murphy, Chair (R)
Sen. Jim Shockley, Vice Chair (R)
Sen. Shannon Augare (D)
Sen. Anders Blewett (D)
Sen. Jeff Essmann (R)
Sen. Greg Hinkle (R)
Sen. Rowlie Hutton (R)
Sen. Cliff Larsen (D)
Sen. Lynda Moss (D)
Sen. Jim Peterson (R)
Sen. Chas Vincent (R)

Members Excused: Sen. Larry Jent (D)

Members Absent: None

Staff Present: Valencia Lane, Legislative Branch
Pam Schindler, Committee Secretary

Audio Committees: These minutes are in outline form only. They provide a list of participants and a record of official action taken by the committee. The link to the audio recording of the meeting is available on the Legislative Branch website.

Committee Business Summary:

Hearing & Date Posted: SB 262, 2/7/2011

Executive Action: SB 42-Do Pass As Amended, SB 97-Do Pass, SB 268-Do Pass

HEARING ON SB 262

Opening Statement by Sponsor:

00:00:18 Sen. Anders Blewett (D), SD 11, opened the hearing on SB 262, Generally revise elder abuse law.

[EXHIBIT\(jus36a01\)](#)

[EXHIBIT\(jus36a02\)](#)

[EXHIBIT\(jus36a03\)](#)

Proponents' Testimony:

00:05:22 Joy Bruck, State President, American Association of Retired Person/Montana (AARP/MT) also for Beth Brennemen, Disability Rights Montana (DRMT)

[EXHIBIT\(jus36a04\)](#)

00:07:12 Kelly Williams, Director, Senior and Long Term Care, Department of Public Health and Human Services (DPHHS)

Opponents' Testimony:

00:08:23 Rose Hughes, Executive Director, Montana Healthcare Association

[EXHIBIT\(jus36a05\)](#)

00:13:01 Casey Blumenthal, Montana Hospital Association (MHA)

Informational Testimony:

00:14:44 Bruce Spencer, Montana Auto Dealers Association (MADA)

00:15:50 Rick Bartos, Chief, Adult Protective Services, DPHHS

Questions from Committee Members and Responses:

00:16:19 Sen. Essmann

00:17:56 Sen. Blewett

00:19:57 Sen. Vincent

00:20:19 Ms. Blumenthal

00:20:44 Sen. Vincent

00:20:57 Ms. Hughes

Closing by Sponsor:

00:21:29 Sen. Blewett

(Sen. Peterson absent from the room)

EXECUTIVE ACTION ON SB 42

- 00:24:04 **Motion:** Sen. Shockley moved that **SB 42 DO PASS AS AMENDED.**
(Amendment was adopted in previous Executive Action 2/1/11)
- 00:24:44 **Motion:** Sen. Shockley moved that **AMENDMENT FOR SB 42 ADOPTED IN PREVIOUS EXECUTIVE ACTION BE REMOVED.**
- 00:25:49 **Vote:** Motion carried unanimously by roll call vote. Sen. Jent and Sen. Peterson voted by proxy.
- 00:25:57 **Motion:** Sen. Shockley moved that **SB 42 DO PASS.**
- 00:26:19 **Motion:** Sen. Shockley moved that **SB 42 BE AMENDED.**
[EXHIBIT\(jus36a06\)](#)

Discussion:

- 00:27:52 Sen. Essmann
- 00:28:41 Sen. Shockley
- 00:29:07 Mark Murphy, former Prosecutor, Yellowstone County
- 00:29:59 Sen. Essmann
- 00:30:56 Chairman Murphy
- 00:31:14 Sen. Shockley
- 00:31:17 Sen. Blewett
- 00:32:00 Chairman Murphy
- 00:33:26 Sen. Shockley
- 00:34:10 Sen. Larsen
- 00:34:37 Sen. Shockley
- 00:35:01 **Vote:** Motion carried unanimously by roll call vote. Sen. Jent and Sen. Peterson voted by proxy.
- 00:35:34 **Motion/Vote:** Sen. Shockley moved that **SB 42 DO PASS AS AMENDED.**
Motion carried 9-3 by roll call vote with Sen. Hinkle, Sen. Murphy and Sen. Vincent voting no. Sen. Jent and Sen. Peterson voted by proxy.

EXECUTIVE ACTION ON SB 97

- 00:37:26 **Motion:** Sen. Shockley moved that **SB 97 DO PASS.**
- 00:37:36 **Motion:** Sen. Shockley moved that **SB 97 BE AMENDED.**
[EXHIBIT\(jus36a07\)](#)

Discussion:

00:38:15 Valencia Lane, Legislative Services Division (LSD)

00:39:46 Sen. Shockley

00:41:56 Sen. Murphy

00:41:59 Sen. Shockley

00:42:05 Sen. Larsen

00:42:57 Sen. Blewett

00:44:00 Sen. Hinkle

00:44:43 Sen. Essmann

00:45:00 **Vote:** Motion failed 6-6 by roll call vote with Sen. Hinkle, Sen. Hutton, Sen. Murphy, Sen. Peterson, Sen. Shockley and Sen. Vincent voting aye. Sen. Jent and Sen. Peterson voted by proxy.

00:46:03 Sen. Augare

00:49:10 **Motion:** Sen. Shockley moved that **SB 97 DO PASS.**

Discussion:

00:50:12 Sen. Moss

00:51:41 Sen. Hinkle

00:51:56 Sen. Shockley

00:52:22 **Vote:** Motion carried 7-5 by roll call vote with Sen. Augare, Sen. Blewett, Sen. Jent, Sen. Larsen and Sen. Moss voting no. Sen. Jent and Sen. Peterson voted by proxy.

EXECUTIVE ACTION ON SB 169

00:53:45 **Motion:** Sen. Hinkle moved that **SB 169 DO PASS.**

00:53:51 **Motion:** Sen. Hinkle moved that **SB 169 BE AMENDED.**
EXHIBIT(jus36a08)

Discussion:

00:55:14 Sen. Blewett

00:56:01 **Vote:** Motion carried unanimously by roll call vote. Sen. Jent and Sen. Peterson voted by proxy.

00:56:45 **Motion:** Sen. Moss moved that **SB 169 BE AMENDED.**
EXHIBIT(jus36a09)

Discussion:

00:58:13 Sen. Hinkle
00:58:58 Sen. Blewett
00:59:15 Sen. Hinkle

00:59:31 **Vote:** Motion failed 5-7 by roll call vote with Sen. Augare, Sen. Blewett, Sen. Jent, Sen. Larsen and Sen. Moss voting aye. Sen. Jent and Sen. Peterson voted by proxy.

01:00:37 **Motion:** Sen. Shockley moved that **SB 169 BE CONCEPTUALLY AMENDED, PAGE 29, LINE 2-STRIKE ALL AFTER 2ND WORD "SUICIDE"**.

DISCUSSION:

01:01:51 Sen. Hinkle
01:02:01 Sen. Essmann
01:02:54 Sen. Blewett
01:03:09 Sen. Shockley
01:04:41 Sen. Moss

01:05:02 **Vote:** Motion carried 11-1 by roll call vote with Sen. Augare voting no. Sen. Jent and Sen. Peterson voted by proxy.

01:05:51 **Motion:** Sen. Shockley moved that **SB 169 DO PASS AS AMENDED**.

Discussion:

01:06:21 Sen. Moss
01:06:53 Sen. Hinkle
01:07:35 Sen. Blewett
01:08:32 Chairman Murphy
01:08:39 Ms. Lane
01:08:57 Chairman Murphy
01:09:09 Sen. Hinkle
01:09:16 Sen. Augare
01:10:13 Sen. Hinkle

01:10:34 Sen. Shockley **WITHDREW MOTION FOR SB 169 DO PASS AS AMENDED**.

Discussion:

01:10:43 Chairman Murphy
01:11:33 Sen. Essmann
01:11:37 Sen. Shockley
01:11:52 Chairman Murphy
01:12:19 Sen. Blewett

11:15 A.M. Recess
11:30 A.M. Committee Resumes

01:27:09 Sen. Augare
01:27:34 Sen. Murphy
01:28:04 Sen. Hinkle
01:28:40 Sen. Blewett
01:28:57 Ms. Lane
01:30:34 Sen. Blewett
01:32:59 Chairman Murphy
01:33:41 Sen. Blewett
01:34:42 Sen. Hinkle
01:35:41 Sen. Essmann
01:37:41 Sen. Hinkle
01:38:24 Sen. Essmann
01:38:31 Sen. Hinkle

EXECUTIVE ACTION ON SB 268

01:39:55 Sen. Blewett
01:40:16 Sen. Shockley

01:40:25 **Motion:** Sen. Hinkle moved that **SB 268 DO PASS.**

01:40:35 **Motion:** Sen. Blewett moved that **SB 268 BE AMENDED WITH A CONCEPTUAL AMENDMENT PAGE 3, LINE 19 "....SPECIAL ELECTION/PRIMARY IN THE SPRING 2012...", INSERT "...GENERAL ELECTION IN NOVEMBER 2012...."**

DISCUSSION:

01:43:16 Sen. Lane
01:44:36 Sen. Murphy
01:45:16 Sen. Augare
01:45:51 Sen. Lane
01:47:37 Sen. Essmann
01:49:55 Sen. Blewett
01:50:48 Sen. Lane
01:53:24 Ms. Lane

01:54:05 **Vote:** Motion failed 5-7 by roll call vote with Sen. Augare, Sen. Blewett, Sen. Jent, Sen. Larsen and Sen. Moss voting aye. Sen. Jent and Sen. Peterson voted by proxy.

01:54:55 Sen. Moss
01:56:03 Sen. Blewett
01:58:38 Sen. Essmann

(Sen. Shockley absent from room)

02:00:51 **Vote:** Motion carried 7-5 by roll call vote with Sen. Augare, Sen. Blewett, Sen. Jent, Sen. Larsen and Sen. Moss voting no. Sen. Jent, Sen. Peterson and Sen. Shockley voted by proxy.

ADJOURNMENT

Adjournment: 12:04 P.M.

Pam Schindler, Secretary

ps

Additional Documents:

EXHIBIT([jus36aad.pdf](#))

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 62nd LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: Chair Ken Peterson, on March 17, 2011 at 8:00 AM, in Room 137 Capitol

ROLL CALL

Members Present:

Rep. Ken Peterson, Chairman (R)
Rep. Diane Sands, Vice Chairman (D)
Rep. Liz Bangerter (R)
Rep. Robyn Driscoll (D)
Rep. Bill Harris (R)
Rep. Ellie Boldman Hill (D)
Rep. David Howard (R)
Rep. Cleve J. Loney (R)
Rep. Margaret (Margie) MacDonald (D)
Rep. Mike Menahan (D)
Rep. Michael (Mike) More (R)
Rep. Carolyn Pease-Lopez (D)
Rep. Joe Read (R)
Rep. Keith Regier (R)
Rep. Dan Skattum (R)
Rep. Bob Wagner (R)
Rep. Wendy Warburton (R)

Members Excused: Rep. Krayton Kerns, Vice Chairman (R)

Members Absent: Rep. Kris Hansen (R)
Rep. Jesse O'Hara (R)

Staff Present: Karen Armstrong, Committee Secretary
David Niss, Legislative Branch

Audio Committees: These minutes are in outline form only. They provide a list of participants and a record of official action taken by the committee. The link to the audio recording of the meeting is available on the Legislative Branch website.

Committee Business Summary:

Hearing & Date Posted: SB 15, 3/8/2011; SB 42, 3/8/2011; SB 68, 3/8/2011;
SB 114, 3/4/2011

Executive Action: None

HEARING ON SB 15**Opening Statement by Sponsor:**

00:02:57 Sen. Larry Jent (D), SD 32, opened the hearing on SB 15, Create misdemeanor crime of aggravated DUI.

EXHIBIT(juh60a01)**Proponents' Testimony:**

00:08:44 Steve Bullock, Montana Attorney General (AG)

00:12:56 Rep. Warburton

00:13:13 Mr. Bullock

00:13:52 Scott Twito, Yellowstone County Attorney

00:16:33 Rep. Hansen arrived.

00:17:56 David Carter, Yellowstone County Attorney's Office

00:22:10 Jed Fitch, Beaverhead County Attorney

00:25:00 Becky Sturdevant, Mothers Against Drunk Driving (MADD)

00:26:46 Chris Minard, self

Opponents' Testimony:

00:27:36 Trey Cathey, self

Informational Testimony:

00:32:09 Gary Marbut, self

Questions from Committee Members and Responses:

00:33:50 Rep. Bangerter

00:34:02 Rep. Driscoll exited.

00:34:24 Sen. Jent

00:34:55 Chairman Peterson

00:40:01 Mr. Carter

00:35:37 Rep. Howard exited.

00:35 48 Chairman Peterson

00:37:01 Mr. Carter

00:37:05 Rep. MacDonald exited.

00:38:52 Rep. MacDonald returned.

00:39:52 Vice Chairwoman Sands

00:40:08 Sen. Jent

00:41:55 Vice Chairwoman Sands

00:43:18 Sen. Jent

00:43:36 Vice Chairwoman Sands

00:44:06 Sen. Jent

00:44:22 Rep. Driscoll returned.

00:44:35 Chairman Peterson

00:45:06 Sen. Jent

00:45:12 Rep. Menahan

00:45:59 Mr. Carter

00:46:04 Sen. Menahan

00:46:14 Mr. Carter

00:46:42 Rep. Menahan
00:47:31 Mr. Carter
00:49:01 Rep. O'Hara exited.
00:49:44 Rep. Menahan
00:50:42 Rep. Regier
00:51:07 Sen. Jent
00:51:32 Rep. O'Hara returned.
00:53:24 Rep. Wagner
00:54:14 Rep. Menahan
00:54:21 Rep. Loney exited.
00:54:43 Rep. Wagner
00:54:48 Rep. Skattum exited.
00:55:13 Sen Jent
00:57:02 Chairman Peterson
00:57:10 Sen. Jent

Closing by Sponsor:

00:58:01 Sen. Jent

HEARING ON SB 42**Opening Statement by Sponsor:**

00:58:22 Sen. Jim Shockley (R), SD 45, opened the hearing on SB 42, Authorize warrants to obtain blood or breath test in DUI cases.

00:59:54 Rep. Loney returned.
01:00:18 Rep. Skattum returned.
01:00:24 Rep. Read exited.
01:02:49 Rep. Bangerter exited.

Proponents' Testimony:

01:04:05 Col. Mike Tooley, Chief, Montana Highway Patrol, Department of Justice (DOJ)
01:06:58 Rep. Bangerter returned.
01:08:24 Sen. Larry Jent
01:08:40 Rep. MacDonald exited.
01:09:21 Vice Chairman Kerns arrived.
01:09:34 Rep. MacDonald returned.
01:09:43 Mark Murphy, Montana County Attorneys Association, Montana Association of Chiefs of Police, Montana Police Protective Association.
01:14:54 Scott Twito, Yellowstone County Attorney
01:17:32 Rep. Read returned.
01:18:02 Becky Sturdevant, Mothers Against Drunk Driving (MADD)
01:20:20 Jed Fitch, Beaverhead County Attorney
01:21:18 Rep. Howard returned.
01:24:05 Jessie Luther, Association of Montana Troopers
01:24:33 Rep. Howard exited.
01:24:53 Chris Minard, self

Opponents' Testimony:

01:26:00 Trey Cathey, self

Informational Testimony: None**Questions from Committee Members and Responses:**

01:28:45 Vice Chairwoman Sands
01:29:28 Col. Tooley
01:29:34 Rep. Driscoll exited.
01:30:19 Vice Chairwoman Sands
01:31:25 Sen. Shockley
01:33:50 Vice Chairwoman Sands
01:34:00 Sen. Shockley
01:34:28 Rep. More
01:34:21 Sen. Shockley
01:35:26 Rep. More
01:35:33 Sen. Shockley
01:36:03 Rep. More
01:36:07 Sen. Shockley
01:36:29 Rep. More
01:37:54 Sen. Shockley
01:38:34 Rep. O'Hara exited.
01:38:57 Sen. Shockley
01:40:39 Rep. Menahan
01:41:59 Mr. Fitch
01:42:55 Rep. Menahan
01:45:18 Mr. Fitch
01:45:12 Rep. Menahan
01:45:57 Mr. Fitch
01:47:14 Rep. Wagner
01:48:05 Sen. Shockley
01:51:05 Rep. Hansen exited.
01:51:26 Rep. Regier exited.
01:52:34 Chairman Peterson
01:53:42 Sen. Shockley
01:55:42 Chairman Peterson
01:55:48 Rep. Hansen returned.
01:55:51 Col. Tooley
01:56:24 Vice Chairwoman Sands exited.

Closing by Sponsor:

01:56:51 Sen. Shockley

01:58:23 Rep. Regier returned.
01:59:21 Chairman Peterson
01:59:48 Rep. Hill
02:01:34 Chairman Peterson
02:01:45 Rep. Hansen returned.

HEARING ON SB 68

Opening Statement by Sponsor:

02:13:00 Sen. Larry Jent (D), SD 32, opened the hearing on SB 68, Clarify duty of driver in accident to remain at the scene.

Proponents' Testimony:

02:19:07 Ali Bovingdon, Attorney General's Office (AG)

EXHIBIT(juh60a02)

02:23:19 Mr. Carter

02:28:39 Rep. Driscoll returned.

02:30:04 Vice Chairwoman Sands returned.

Opponents' Testimony: None

Informational Testimony: None

Questions from Committee Members and Responses:

02:29:53 Rep. Regier

02:30:15 Sen. Jent

02:31:12 Rep. Regier

02:31:26 Sen. Jent

02:32:02 Rep. Bangerter

02:32:22 Rep. Hansen

02:32:30 Sen. Jent

02:32:37 Rep. Loney

02:33:23 Mr. Carter

Closing by Sponsor:

02:35:01 Sen. Jent

HEARING ON SB 114

Opening Statement by Sponsor:

02:36:07 Sen. Greg Hinkle (R), SD 7, opened the hearing on SB 114, Federal law enforcement officers should communicate with sheriff.

02:41:27 Rep. Skattum exited.

Proponents' Testimony:

02:44:00 Gary Marbut, Montana Shooting Sports Association (MSSA) Western Montana Fish and Game Association (WMFGA)

EXHIBIT(juh60a03)

02:47:55 Rep. Skattum returned.

02:48:28 Rep. Wagner exited.

02:48:42 Rep. Howard exited.

02:49:20 Daniel Cole, representing Sanders County Sheriff Tom Rummel

02:51:10 Rep. O'Hara exited.

02:51:54 Franklin Shook, Oath Keepers of Montana

02:52:47 Bob Faw, self
02:54:15 Dale Grossfield, self
02:54:29 Rep. Howard returned.
02:54:40 Rep. Wagner returned.
02:55:13 Rep. Howard exited.
02:59:28 Chairman Peterson
03:01:08 Mr. Grossfield
[EXHIBIT\(juh60a04\)](#)
[EXHIBIT\(juh60a05\)](#)
03:01:53 Rep. Read exited.
03:02:23 Rep. Wagner returned.
03:03:16 Chairman Peterson
03:03:20 Kevin McCauley, self
03:04:25 Rep. Howard returned.
03:06:34 Trey Cathey, self
03:08:12 Rep. Read returned.
03:08:44 Tim Ravndal, Lewis and Clark Conservative Tea Party
03:10:43 Rep. O'Hara returned.
03:13:33 Jim Smith, Montana Sheriffs and Peace Officers Association

Opponents' Testimony:

03:16:28 Tom Baird, self
03:16:47 Jamee Greer, Montana Human Rights Network

Informational Testimony: None**Questions from Committee Members and Responses:**

03:17:59 Rep. Wagner
03:18:43 Rep. Bangerter exited.
03:18:52 Rep. Pease-Lopez exited.
03:19:02 Rep. Loney exited.
03:19:42 Rep. Bangerter returned.
03:20:22 Chairman Peterson
03:21:02 Mr. Smith
03:21:36 Rep. Loney returned.
03:21:58 Rep. Wagner
03:23:44 Mr. Smith
03:23:57 Rep. Bangerter exited.
03:24:19 Rep. Wagner
03:24:27 Mr. Smith
03:24:40 Rep. Wagner
03:24:47 Rep. Pease-Lopez returned.
03:24:58 Mr. Smith
03:25:15 Rep. Wagner
03:25:30 Chairman Peterson
03:28:06 Rep. More
03:28:50 Mr. Smith
03:29:01 Rep. Read exited.
03:29:31 Rep. More
03:29:37 Mr. Marbut

03:30:06 Rep. More
03:30:20 Mr. Marbut
03:30:30 Rep. More
03:30:46 Vice Chairwoman Sands
03:30:52 Rep. Harris exited.
03:30:59 Rep. Menahan exited.
03:31:22 Sen. Hinkle
03:31:47 Vice Chairwoman Sands
03:32:21 Sen. Hinkle
03:32:31 Vice Chairwoman Sands
03:33:09 Sen. Hinkle
03:33:40 Vice Chairwoman Sands
03:34:01 Sen. Hinkle
03:34:16 Vice Chairwoman Sands
03:34:25 Sen. Hinkle
03:34:37 Rep. Hill
03:35:12 Sen. Hinkle
03:35:20 Rep. Harris and Rep. Menahan returned.
03:36:36 Chairman Peterson
03:36:43 Rep. Wagner
03:37:18 Chairman Peterson
03:37:24 Rep. Wagner
03:38:06 Rep. Read returned.
03:38:23 Chairman Peterson
03:38:33 Rep. Harris
03:39:48 Chairman Peterson

Closing by Sponsor:

03:40:25 Sen. Hinkle

ADJOURNMENT

03:43:18 Adjournment

Karen Armstrong, Secretary

ka

Additional Exhibit:
EXHIBIT([juh60a06](#))

Additional Documents:
EXHIBIT([juh60aad.pdf](#))

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 62nd LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: Chair Ken Peterson, on March 22, 2011 at 8:00 AM, in Room 137 Capitol

ROLL CALL

Members Present:

Rep. Ken Peterson, Chairman (R)
Rep. Robyn Driscoll (D)
Rep. Kris Hansen (R)
Rep. Bill Harris (R)
Rep. David Howard (R)
Rep. Cleve J. Loney (R)
Rep. Margaret (Margie) MacDonald (D)
Rep. Mike Menahan (D)
Rep. Michael (Mike) More (R)
Rep. Jesse O'Hara (R)
Rep. Carolyn Pease-Lopez (D)
Rep. Joe Read (R)
Rep. Keith Regier (R)
Rep. Bob Wagner (R)
Rep. Wendy Warburton (R)

Members Excused: Rep. Diane Sands, Vice Chairman (D)
Rep. Liz Bangerter (R)

Members Absent: Rep. Krayton Kerns, Vice Chairman (R)
Rep. Ellie Boldman Hill (D)
Rep. Dan Skattum (R)

Staff Present: Karen Armstrong, Committee Secretary
David Niss, Legislative Branch

Audio Committees: These minutes are in outline form only. They provide a list of participants and a record of official action taken by the committee. The link to the audio recording of the meeting is available on the Legislative Branch website.

Committee Business Summary:

Executive action: SB 15, SB 42, SB 354, SB 217

EXECUTIVE ACTION ON SB 15

00:01:29 Rep. Hill arrived.

00:01:42 **Motion:** Rep. Regier moved that **SB 15 BE CONCURRED IN.**

00:02:35 **Motion:** Rep. Regier moved that **HR 15 BE AMENDED.**

EXHIBIT(juh64a01)

00:03:04 Rep Kerns arrived.

Discussion:

00:03:13 Rep. Regier

00:03:23 Chairman Peterson

00:03:58 **Vote:** Motion carried unanimously by voice vote of those present and voting.

00:04:16 **Motion:** Rep. Regier moved that **SB 15 BE CONCURRED IN AS AMENDED.**

00:04:37 **Substitute Motion:** Rep. Regier made a substitute motion that **SB 15 BE AMENDED.**

EXHIBIT(juh64a02)

Discussion:

00:04:51 Rep. Warburton

00:05:21 Rep. Regier

00:05:25 Rep. More

00:05:55 Rep. Hansen

00:07:51 Rep. Pease-Lopez

00:08:27 Rep. Skattum arrived.

00:09:00 Chairman Peterson

00:09:09 Rep. Wagner

00:10:51 Rep. Harris

00:11:06 Rep. Howard

00:11:51 Rep. Bangerter arrived.

00:12:02 Chairman Peterson

00:12:40 Rep. Menahan

00:13:24 **Vote:** Motion carried 15-5 by roll call vote with Rep. Bangerter, Rep. More, Rep. Pease-Lopez, Rep. Wagner and Rep. Warburton voting no. Rep. Sands voted by proxy.

00:14:43 **Motion:** Rep. Kerns moved that **SB 15 BE CONCURRED IN AS AMENDED.**

Discussion:

00:14:52 Rep. Menahan

00:15:37 Rep. Howard exited.

00:17:16 Rep. Menahan

00:18:33 **Vote:** Motion carried 15-5 by roll call vote with Rep. Kerns, Rep. Read, Rep. Skattum, Rep. Wagner and Rep. Warburton voting no. Rep. Howard and Rep. Sands voted by proxy. Rep. Regier will carry the bill.

EXECUTIVE ACTION ON SB 42

00:20:12 **Motion:** Rep. Kerns moved that **SB 42 BE CONCURRED IN.**

00:20:48 **Motion:** Rep. Menahan moved that **SB 42 BE AMENDED.**

EXHIBIT(juh64a03)

Discussion:

00:21:26 Rep. Menahan
00:22:38 Rep. Howard returned.
00:22:42 Chairman Peterson
00:22:45 Rep. Menahan
00:22:50 Chairman Peterson
00:22:56 Rep. Harris
00:23:07 Rep. Menahan
00:24:02 Rep. Harris
00:24:05 Chairman Peterson

00:24:09 **Vote:** Motion carried unanimously by voice vote. Rep Sands voted by proxy.

00:24:17 **Motion:** Rep. Kerns moved that **SB 42 BE CONCURRED IN AS AMENDED.**

Discussion:

00:24:25 Rep. More
00:24:59 Rep. Menahan
00:26:25 Rep. Warburton
00:26:38 Rep. Howard
00:28:17 Rep. Bangerter
00:31:18 Rep. O'Hara
00:32:07 Chairman Peterson

00:32:43 **Vote:** Motion carried 15-5 by roll call vote with Rep. Kerns, Rep. More, Rep. Skattum, Rep. Wagner and Rep. Warburton voting no. Rep. Sands voted by proxy. Rep. Howard will carry the bill.

EXECUTIVE ACTION ON SB 354

00:34:15 **Motion:** Rep. Kerns moved that **SB 354 BE CONCURRED IN.**

Discussion:

00:34:32 Rep. Warburton
00:35:10 Rep. More
00:35:31 Rep. Loney

00:35:55 Chairman Peterson
00:36:27 Rep. Hill
00:36:50 Chairman Peterson

00:37:03 **Vote:** Motion failed 8-12 by roll call vote with Rep. Hill, Rep. Howard, Rep. MacDonald, Rep. Menahan, Rep. O'Hara, Rep. Pease-Lopez, Rep. Peterson and Rep. Sands voting aye. Rep. Sands voted by proxy.

00:38:23 **Motion/Vote:** Rep. Kerns moved that **SB 354 BE TABLED AND THE VOTE REVERSED**. Motion carried 18-1 by voice vote with Rep. Peterson voting no. Rep. Sands was absent and did not vote.

EXECUTIVE ACTION ON SB 217

Previously tabled March 10, 2011

00:41:07 **Motion/Vote:** Rep. Regier moved that **SB 217 BE RECONSIDERED**. Motion carried 11-9 by roll call vote with Rep. Hansen, Rep. Harris, Rep. Howard, Rep. Loney, Rep. Menahan, Rep. O'Hara, Rep. Read, Rep. Wagner and Rep. Warburton voting no. Rep. Sands voted by proxy.

00:41:18 **Motion:** Rep. Kerns moved that **SB 217 BE CONCURRED IN**.

00:42:30 **Motion:** Rep. Menahan moved that **SB 217 BE AMENDED**.
[EXHIBIT\(juh64a04\)](#)

Discussion:

00:43:08 Rep. Menahan
00:47:54 Rep. Regier
00:47:08 Rep. Menahan
00:48:49 Rep. Hansen
00:49:14 Rep. Menahan
00:49:20 Rep. Hansen
00:49:25 Rep. Menahan

00:49:57 **Vote:** Motion carried unanimously by roll call vote. Rep. Sands voted by proxy.

00:50:56 **Motion:** Rep. Kerns moved that **SB 217 BE CONCURRED IN AS AMENDED**.

00:51:02 **Substitute Motion:** Rep. Menahan made a substitute motion that **SB 217 BE AMENDED**.
[EXHIBIT\(juh64a05\)](#)

Discussion:

00:51:14 Rep. Menahan
00:52:43 Chairman Peterson
00:53:00 Rep. Menahan
00:53:39 Chairman Peterson

00:54:14 **Vote:** Motion carried 13-6 by roll call vote with Rep. Driscoll, Rep. Hill,

Rep. MacDonald, Rep. Pease-Lopez, Rep. Peterson and Rep. Regier voting no.
Rep. Sands did not vote.

00:55:27 **Motion:** Rep. Kerns moved that **SB 217 BE CONCURRED IN AS AMENDED.**

Discussion:

00:55:34 Rep. O'Hara
00:55:49 Rep. Hill
00:57:15 Rep. Harris
00:58:45 Rep. Howard
00:59:58 Rep. Regier
01:00:28 Rep. More
01:01:42 Rep. Bangerter
01:02:10 Rep. Menahan
01:04:28 Chairman Peterson

01:05:49 **Vote:** Motion failed 8-12 by roll call vote with Rep. Driscoll, Rep. Hill,
Rep. Loney, Rep. MacDonald, Rep. Menahan, Rep. More, Rep. Pease-Lopez
and Rep. Sands voting aye. Rep. Sands voted by proxy.

01:05:54 **Motion/Vote:** Rep. Kerns moved that **SB 217 BE TABLED AND THE VOTE
REVERSED.** Motion carried unanimously by voice vote of those present and
voting.

ADJOURNMENT

01:06:27 Adjournment

Karen Armstrong, Secretary

ka

Additional exhibits:

[EXHIBIT\(juh64a06\)](#)

[EXHIBIT\(juh64a07\)](#)

[EXHIBIT\(juh64a08\)](#)

Additional Documents:

EXHIBIT([juh64aad.pdf](#))